



MINISTÉRIO DE MINAS E ENERGIA
SECRETARIA DE GEOLOGIA, MINERAÇÃO E TRANSFORMAÇÃO MINERAL

CPRM – SERVIÇO GEOLÓGICO DO BRASIL
Diretoria de Geologia e Recursos Minerais

Relatório de Viagem
Integrar a delegação brasileira na 1ª Parte da 26ª Sessão do Conselho da Autoridade Internacional
dos Fundos Marinhos da ONU (ISBA)

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Fevereiro/2020

I - Introdução

Todos os anos são realizadas Sessões ordinárias da Comissão Técnica e Jurídica (LTC), do Conselho e da Assembleia da Autoridade Internacional dos Fundos Marinhos da ONU (ISBA), em sua sede na cidade de Kingston, Jamaica.

Tendo em vista as diversas questões abordadas, as sessões da LTC e do Conselho são divididas em 02(duas) partes, sendo a primeira no mês de fevereiro e a segunda ocorrendo no mês de julho de cada ano. Apenas a sessão da Assembleia da ISBA ocorre uma vez ao ano, no mês de julho.

A primeira parte da 27ª Sessão da Autoridade Internacional dos Fundos Marinhos (ISA) começou com a reunião do Conselho, entre os dias 17 a 21 de fevereiro de 2020, sendo seguida por uma reunião da Comissão Jurídica e Técnica (LTC).

Considerando as diversas questões a serem abordadas junto à Autoridade Internacional dos Fundos Marinhos, que envolveram especialmente aquelas relacionadas à gestão de projetos na Area (solo e subsolo marinhos em áreas além da jurisdição nacional), geologia marinha, legislação internacional e regulamentação aplicável à Area, o Ministério de Relações Exteriores solicitou a participação desta coordenadora para integrar a delegação brasileira durante a 27ª sessão do Conselho da ISBA, em Kingston, Jamaica.

A Agenda aprovada da primeira parte da 27ª Sessão do Conselho da ISBA, encontra-se descrita no documento ISBA 27/C/L.1, com o seguinte conteúdo:

1. Abertura da sessão.
2. Adoção da ordem do dia.
3. Eleição do Presidente.
4. Eleição dos Vice-Presidentes.
5. Relatório do Secretário-Geral sobre as credenciais dos membros do Conselho.
6. Questões relativas à eleição em 2021 dos membros da Comissão Técnica e Jurídica.
7. Eleição para preenchimento de vaga na LTC, de acordo com o artigo 163, parágrafo 7, da Convenção das Nações Unidas sobre o Direito do Mar (CNUDM), se houver.
8. Status dos contratos de exploração e assuntos relacionados, incluindo informações sobre a revisão periódica da implementação dos planos de trabalho aprovados para exploração.
9. Relatório do Secretário-Geral sobre a situação da legislação nacional relativa a mineração no fundo do mar e assuntos relacionados.
10. Apreciação, com vista à aprovação, dos pedidos de plano de trabalho para exploração, se houver.
11. Relatório do Secretário-Geral sobre a implementação da decisão do Conselho em 2019 relativo aos relatórios do Presidente da LTC.
12. Projeto de regulamento para exploração de recursos minerais na Area.
13. Relatório do Presidente da Comissão Jurídica e Técnica sobre o trabalho do Conselho em sua vigésima sexta sessão.
14. Relatório do Comitê de Finanças.
15. Orçamento da Autoridade Internacional dos Fundos Marinhos.
16. Escala de avaliação para contribuições ao orçamento do Fundo Marinho Internacional Autoridade.
17. Relatório sobre assuntos relacionados à Empresa.
18. Cooperação com outras organizações internacionais relevantes.
19. Datas da próxima sessão.

20. Outros assuntos.....

A sessão foi composta pelos representantes de governo dos Países parte da Convenção, da sociedade civil, de acadêmicos e de Contratantes com a ISBA. Durante as discussões, muito pouco se avançou com relação à análise da minuta do Código de Exploração, tendo concentrado suas discussões sobre a necessidade de análise mais aprofundada sobre a composição da Comissão Técnica e Jurídica (LTC), sobre o mecanismo de pagamento, questões relacionadas à proteção ambiental, sobre os Planos de Gestão Ambientais Regionais (REMPs) e sobre a modelo de repartição de benefícios proposto pelo MIT.

Durante o período indicado, além da participação nas sessões plenárias, nos grupos de trabalho e nas reuniões informais, também ocorreram reuniões diárias na Embaixada do Brasil e, no dia seguinte do término da sessão, ocorreram reuniões na Embaixada do Brasil na Jamaica, nas quais foram avaliadas as decisões e propostas da 1ª parte e as que seguiram para apreciação para a 2ª Parte da 26ª sessão do Conselho.

Para tanto, foram aprovados o **afastamento do país**, com ônus para a CPRM, desta representante para viagem à Kingston, Jamaica, entre os dias 15 (**saída**) a 23 (**retorno**) de fevereiro de 2020.

As despesas relacionadas foram alocadas no Centro de Custos 4340.084, PTRES 093.057 (Projeto PROERG).

II. Equipe

A delegação brasileira foi composta pelos seguintes integrantes:

1. **Sr. Carlos Alberto Michaelson den Hartog** - Embaixador do Brasil na Jamaica.
2. **Sra. Claudia Maria Rezende de Souza** - Coordenadora da Diretoria de Geologia e Recursos Minerais da CPRM.
3. **Prof. Dr. Rodrigo Fenandes More** – SECIRM e Candidato do Brasil ao para o Tribunal Marítimo Internacional.
4. **Sr. José Ubaldino de Lima** - Coordenador – Geral de Geologia e Recursos Minerais do Ministério de Minas e Energia.

III. Período

De 15 **de fevereiro** (data de saída) a 23 **de fevereiro** (data de chegada), de 2020.

IV - Objetivos da Viagem

A viagem teve como objetivo integrar a delegação brasileira durante a 1ª Parte da 27ª Sessão do Conselho da Autoridade Internacional dos Fundos Marinhos ISBA, subsidiando o chefe da delegação, Embaixador do Brasil na Jamaica, nas questões relacionadas à posição do Brasil nos temas em discussão, bem como participar das discussões sobre a minuta do Código de Exploração.

V – Descrição e análise dos Assuntos Tratados

Na primeira parte da 26ª sessão anual da International Seabed Authority (ISBA-26), o Conselho abordou questões relacionadas à composição da Comissão Técnica e Jurídica (LTC) e no projeto de regulamento para a exploração de recursos minerais na Área (Draft do Código de Mineração).

Os delegados também discutiram questões sobre novas propostas de Planos Regionais de Gestão Ambiental (REMPs), bem como sobre o modelo financeiro para a exploração mineral na Área.

As discussões se concentraram no desenvolvimento de método de trabalho para abordar o projeto de regulamento para exploração, tendo o Conselho adotado a decisão de instituir grupos de trabalho informais responsáveis por questões relacionadas com:

- preservação e proteção do meio marinho;
- inspeção, cumprimento e execução; e
- assuntos institucionais.

A questão de maior ênfase na 1ª parte da 26ª sessão do Conselho foi sobre como abordar **a composição dos membros da Comissão Jurídica e Técnica (LTC)**, questão que está na agenda desde a última eleição dos membros da Comissão. O Conselho adotou uma decisão que traça um “road map” para permitir que uma decisão final seja tomada em sua próxima reunião em julho de 2020.

Durante esta sessão, o Conselho continuou as discussões sobre o projeto de regulamento de exploração apresentados pela LTC, com comentários dos membros do Conselho, abordando disposições sobre:

- proteção e preservação do meio marinho, em especial os REMPs;
- revisão e modificação de planos de trabalho; e
- planos de encerramento de atividades.

5.2. Relatório ISA-26 (Parte I)

Na segunda-feira, 17 de fevereiro, Luis del Solar (Argentina), Presidente do Conselho Interino da ISA-25, abriu a reunião. O secretário-geral da ISA (SG), Michael Lodge, destacou uma “agenda pesada e tempo limitado”, apontando para a necessidade de progresso no Código de Exploração. O SG apresentou a atualização sobre o trabalho do LTC (Comissão Técnica e Jurídica da ISBA) durante o período entre as sessões.

Em plenário na manhã de sexta-feira, o SG atualizou o Conselho sobre questões financeiras da ISA, incluindo o status dos fundos fiduciários e serviços de relatórios de conferências. Ele pediu contribuições para o Voluntary Trust Fund para o Comitê Financeiro e o LTC, observando que, apesar das contribuições recentes, o Fundo estava novamente em déficit. Ele explicou que seriam necessários US\$ 75.000,00 a 80.000,00 adicionais para apoiar os membros nas reuniões de julho de 2020. Ele também pediu apoio ao Voluntary Trust Fund para a Enterprise, apontando para seus “recursos limitados”. Sobre o Fundo Fiduciário Voluntário para o Conselho, ele observou um crédito restante, que apoiaria os membros do Conselho em julho de 2020.

O SG lembrou ao Conselho sua obrigação de fornecer à Assembleia um relatório sobre o Plano de Ação de Alto Nível sobre a ISA e as Prioridades para o Período 2019-2023 (ISBA/25/A/6), observando que a Secretaria trabalharia estreitamente para preparar um projeto de relatório para consideração do Conselho em julho de 2020.

5.3. Adoção da agenda e eleição de dirigentes:

Na segunda-feira, o Conselho adotou a agenda (ISBA/26/C/L.1). Bangladesh, para o Grupo Ásia-Pacífico, propôs, e os delegados concordaram, em eleger Taaniela Kula (Tonga) como Presidente do Conselho ISA-26. Na quarta-feira, a vice-presidente da ISA-26, Kathy-Ann Brown (Jamaica), foi designada como presidente interina.

5.4. Credenciais dos membros do Conselho:

Na quinta-feira, o SG informou ao Conselho que, em 20 de fevereiro de 2020, credenciais formais haviam sido apresentadas por 28 estados. Acrescentou que Argentina, Camarões, Índia e Nigéri também comunicaram informações sobre a nomeação de seus representantes.

5.5. Questões relacionadas à eleição de membros do LTC

Na segunda-feira, o Conselho considerou duas propostas relativas à **eleição de membros do LTC**. A primeira (**ISBA/25/C/L.2**) foi proposta na **ISA-25 pelo Grupo Africano e GRULAC**, quando foi decidido que seria o primeiro assunto a ser discutido e definido na 26ª sessão do Conselho. A segunda proposta (**ISBA/26/C/L.2**) foi uma emenda à proposta do Grupo Africano/GRULAC apresentada para aquela sessão, pela Austrália, Canadá, França, Alemanha, Itália, Noruega, Espanha e Reino Unido. O Presidente do Conselho Kula instou os delegados a tomar uma decisão naquela sessão.

O projeto de Decisão (**ISBA/25/C/L.2**) apresentado por Argélia, em nome do Grupo Africano, e do Brasil, em nome do Grupo dos Estados da América Latina e do Caribe Grupo Africano/GRULAC foram para que, de acordo com o artigo 163.º, nºs 3 e 4, da Convenção, o Conselho decida:

- que a **representação geográfica equitativa**, bem como os interesses especiais e áreas de especialização apropriadas, **devem orientar** o processo de eleição dos membros da Comissão;
- que qualquer mudança futura no tamanho da LTC deve ser determinada o mais tardar um ano antes da eleição, levando em consideração o parágrafo acima; e que o número de vagas atribuídas a cada grupo regional na próxima eleição seja determinado considerando a **representação geográfica equitativa**.

As alterações da segunda proposta foram para que o Conselho:

- confirme que qualificações adequadas em áreas relevantes de especialização, representação geográfica equitativa e a representação de interesses especiais, devem orientar o processo de eleição dos membros da Comissão; e
- solicita que o Secretário-Geral forneça, em consulta com o LTC, no mais tardar de 15 meses antes de uma eleição, um relatório para consideração do Conselho da ISBA, identificando o tamanho ideal da próxima Comissão a ser eleita **e a composição da expertise entre seus membros**.
- decida que qualquer futura alteração no tamanho e na composição da LTC deverá ser determinada pelo Conselho, no mínimo um ano antes à eleição, após considerar o relatório requerido no parágrafo anterior e levar em consideração o parágrafo 2.

Na segunda-feira, o Brasil, pelo GRULAC, e Gana, pelo Grupo Africano, falaram sobre a primeira proposta, destacando as “delicadas e complexas discussões sobre a composição do LTC” e incentivando o Conselho a tomar uma decisão por consenso.

O Representante do Brasil, embaixador Carlos Hartog alegou que as questões sobre a definição da composição da LTC deveriam ser **decididas** antes de iniciar qualquer outro assunto, como foi determinado na 25ª sessão do Conselho. Recordou que essa matéria foi decidida, por consenso, em 2017, como apresentada na decisão ISBA/23/C/2, não se justificando postergar injustificadamente uma

decisão do Conselho. Reforçou o apoio de votação da proposta do Grupo Africano e GRULAC. Alegou, com o apoio de Ghana, que não se sentia confortável em prosseguir com as discussões sobre o Draft do Código de Exploração, sem chegar a uma solução sobre a composição da LTC. Para tanto, sugeriu que caso as questões sobre a composição da LTC fossem definidos naquela sessão e, caso não tendo tempo hábil para os demais itens, que o Draft do Código de Exploração fosse discutido em julho. Ressaltou que a representação geográfica equitativa é princípio consagrado pela ONU, como indicado pela Assembleia Geral da ONU.

O Reino Unido se manifestou sobre a segunda proposta, destacando que as emendas propostas visavam manter a “estrutura e integridade” da proposta do Grupo Africano/GRULAC, assegurando ao mesmo tempo que a distribuição geográfica não é superior em relação a outros fatores, incluindo expertise, e que os critérios estão em conformidade com a UNCLOS.

A partir de então, os delegados discutiram então a representação geográfica, a diversidade de especialidades e a representação de interesses especiais.

Jamaica, apoiada pela Argentina e Brasil, propôs que as questões sobre o LTC fossem discutidas até se alcançar consenso naquela sessão, defendendo o projeto apresentado pelo Grupo Africano e GRULAC. Destacou que **a representação geográfica equitativa é um princípio orientador no sistema da ONU** e que deveria ser preservado nos órgãos da ISBA.

Costa Rica ressaltou que as considerações geográficas e de gênero não comprometem a diversidade de conhecimentos, indagando os demais sobre a existência de especialistas de países em desenvolvimento, devidamente qualificados. Concluiu alegando que a segurança internacional da própria ONU depende de assegurar o equilíbrio na distribuição geográfica.

Brasil esclareceu que na sessão anterior do Conselho, todos concordaram em adiar a aprovação da decisão (ISBA 25/C/L.2), como primeiro assunto a ser discutido nessa 26ª sessão, não se justificando reiniciar a discussão a partir de um novo projeto (ISBA/26/C/L.2) em substituição ao anterior já exaustivamente discutido e pronto para votação. Lembrou, ainda, que o LTC é um grupo técnico, mas também político, e enquanto existir a diferenciação em sua composição, não é possível assegurar a distribuição geográfica equitativa. Ressaltou que a LTC é um órgão independente que se reporta apenas ao SG-ISBA. Apoiando a Costa Rica reforçou que o Brasil também possui especialistas, tanto que o vencedor do prêmio do SG daquele ano foi para um pesquisador brasileiro. Alegou que a LTC não apresenta apenas documentos técnicos. Em suas conclusões, após avaliação dos experts, o LTC é que propõe as Recomendações.

Bélgica lembrou a proposta de 2018 de seu país sobre o fortalecimento da perícia ambiental e científica no LTC (ISBA/25/C/22). Apoiou a representação geográfica equitativa.

Alemanha observou que o conhecimento especializado relacionado à oceanologia e à proteção do ambiente marinho está sub-representado no atual LTC, sugerindo a convocação de um pequeno grupo de trabalho para discutir o assunto.

Índia, apoiada pela China, pediu aos delegados que tomem uma decisão que equilibre a representação geográfica e a experiência. O GRULAC salientou que as preocupações do grupo em relação à representação regional devem ser levadas a sério para garantir a confiança nas recomendações do LTC. Trinidad e Tobago indicou que a prioridade deve considerar o tamanho ideal do LTC, levando em consideração tanto a experiência quanto o “conceito universalmente aceito de distribuição geográfica equitativa”. A China sugeriu que a proposta deve ser desenvolvida pelo LTC antes de chegar ao Conselho.

Argentina, apoiada pelo Brasil e Chile, destacou que o número de representantes da LTC compromete a legitimidade do grupo. Alegou falta de equilíbrio, pois conta com 5 membros do Grupo Africano, 5 membros do GRULAC e 9 membros da Grupo da Europa Oriental. Solicitou que seja preservada a igualdade, como nos demais órgãos internacionais e que a legitimidade e representatividade deve ser regularizada na LTC.

O Presidente do Conselho Kula, apoiado pelo Grupo Africano, sugeriu a continuação de uma sessão informal para permitir ao Conselho chegar a um acordo. Após essas discussões informais, os delegados concordaram em voltar esta questão mais tarde, baseando suas deliberações em um novo documento que destaca as diferenças entre as duas propostas.

Na **terça-feira**, o presidente do Conselho, Kula, anunciou que durante o dia seriam realizadas consultas informais, facilitadas pelo vice-presidente do Conselho, Vladislav Kurbatskiy (Federação Russa), para trabalhar em uma proposta a ser considerada em plenário.

Durante todo o dia, foram discutidas os 2(dois) projetos de decisão.

Alemanha reforçou a necessidade de criação de um Grupo de Trabalho para dar sequência às decisões, apoiado por Rússia, Noruega e França.

Todavia, não chegaram a um consenso sobre a metodologia, nem a forma como ocorreriam essas reuniões (eletronicamente, plataforma, presencial, dentre outras).

Na **quarta-feira**, em uma plenária informal, o facilitador Kurbatskiy relatou o resultado do grupo, indicando áreas de acordo, **incluindo que deve haver 25 membros do LTC** e que o secretário-geral deve buscar as opiniões do LTC sobre futuras áreas de especialização necessárias. No entanto, **afirmou que o grupo informal não chegou ao consenso sobre a questão do equilíbrio geográfico equitativo, indicando que alguns insistem em uma distribuição fixa, enquanto outros preferem mais flexibilidade**. Ele expressou disposição para preparar um documento de trabalho para propor um possível mecanismo daqui para frente.

Na discussão que se seguiu, os representantes de dois grupos regionais sugeriram deixar de lado todas as discussões sobre o projeto de regulamento de exploração mineral na Área, relacionados ao trabalho da LTC.

O presidente do conselho Brown disse que seria difícil distinguir quais partes do projeto de regulamentação se relacionam com o LTC, observando que todo o documento pode estar relacionado desde que a Comissão revise o plano de trabalho. Outro participante procurou esclarecer que, como o atual LTC está devidamente constituído, com questões relacionadas ao LTC relevantes apenas para sua eleição em 2021, as disputas em curso não devem afetar a agenda atual. Representantes regionais, incluindo o GRULAC, explicaram que seu grupo não se sentia à vontade com referências ao LTC, sem conhecimento sobre sua futura composição, apontando que a questão já havia sido adiada pelo Conselho da ISA em sessões anteriores. Diante dessa situação, o Presidente do Conselho em exercício, Brown, pediu ao Facilitador Kurbatskiy que retomasse as discussões informais sobre como o Conselho poderia proceder.

Na **quinta-feira**, o presidente do Conselho em exercício, Brown, convidou os delegados a revisar um projeto de decisão do Conselho relacionado à eleição dos membros do LTC em 2021 (**ISBA/26/C/CRP.3**) e um “documento de trabalho” do facilitador sobre o mesmo. Após outras consultas regionais sobre os dois documentos, o Facilitador Kurbatskiy observou sua proposta de que um trabalho detalhado seja realizado entre as sessões de acordo com o documento de trabalho, para um entendimento comum sobre o assunto **na segunda parte da sessão do Conselho ISBA-26**.

Nas discussões, grupos regionais propuseram se referir à “distribuição” geográfica equitativa em vez de “equilíbrio”, observando que o primeiro está alinhado com a UNCLOS e outros regimes. Ressaltaram a necessidade de que o documento de trabalho do Facilitador seja parte integrante da decisão, solicitando que seja incluído como anexo à decisão.

Em face de comentários adicionais nas discussões informais em plenário, o facilitador Kurbatskiy comprometeu-se a alterar os documentos para incluir linguagem sobre a representação de interesses especiais na disposição sobre representação geográfica equitativa e excluir a palavra “próximo” para abranger eleições além de 2021. Sobre os cronogramas para fornecer um projeto de mecanismo para a eleição de membros do LTC para consideração entre as sessões, Kurbatskiy explicou que só poderia

especificar um cronograma quando houvesse acordo sobre o número de especialistas a serem incluídos na Comissão e observou que esperava isso seja possível até o final de março de 2020. Os delegados concordaram com o projeto de decisão revisado e o documento de trabalho, incorporando as mudanças solicitadas.

Decisão Final: Na sua decisão relativa à eleição em 2021 dos membros do LTC (ISBA/26/C/CRP.3), o Conselho, entre outros, expressa compreensão pelo aumento da complexidade da questão da eleição do LTC membros e o desejo de continuar o trabalho do Conselho de forma construtiva, e:

- solicita ao Secretário-Geral que busque a opinião do LTC sobre sua avaliação das necessidades atuais e futuras de áreas específicas de especialização na próxima reunião da Comissão e prepare um relatório para consideração do Conselho em sua próxima reunião em julho de 2020;
- decide continuar a discutir o processo que rege as eleições dos membros do LTC com base num documento de trabalho apresentado em 20 de fevereiro de 2020 pelo Facilitador, como anexo e parte integrante da decisão, como ponto de partida para chegar a um consenso sobre esta matéria; e
- decide que a questão da composição da Comissão será considerada prioritária na próxima reunião do Conselho com vista à tomada de uma decisão nessa reunião.

O documento de trabalho do Facilitador em anexo propõe, como base de partida para futuras discussões que, entre outras coisas:

- o número total de membros LTC não deve ser inferior a 25, mas não deve exceder 30;
- o LTC fornecerá seus pontos de vista e orientações claras sobre a composição da Comissão em relação às necessidades de especialização o mais rápido possível;
- o Conselho elabore um mecanismo claro para a próxima eleição de membros do LTC com base na distribuição geográfica equitativa, na representação de interesses especiais e na avaliação do LTC sobre a necessidade de áreas específicas de especialização, entre outros;
- o Facilitador fornecerá um primeiro rascunho do mecanismo até o final de março de 2020, seguido por uma troca de comentários e propostas por escrito enviadas à Secretaria dentro de três semanas, e o Facilitador alterará o texto dentro de três semanas; e
- seja adotada uma decisão sobre o mecanismo para reger as eleições dos membros do LTC durante a reunião do Conselho em julho de 2020.

5.6. Eleição para preencher uma vaga no LTC

Na segunda-feira, os delegados elegeram Carsten Rühlemann (Alemanha) para substituir Christian Jürgen Reichert (Alemanha) no LTC (ISBA/26/C/5). O Presidente do Conselho Kula agradeceu a este último por seu serviço, inclusive como Presidente do LTC.

5.7. Situação dos Contratos de Pesquisa e Assuntos Relacionados

Na segunda-feira, o Presidente do Conselho Kula apresentou o documento (ISBA/26/C/4), apontando para um anexo sobre a situação dos contratos de exploração. Ele chamou a atenção dos delegados para o projeto de recomendação, que o Conselho aprovou sem alterações.

Resultado: O Conselho concordou em tomar nota: da situação dos contratos de exploração; informações sobre as revisões periódicas da implementação dos planos de trabalho aprovados; e propôs o desenvolvimento de orientações para contratados sobre o conteúdo, formato e estrutura dos relatórios periódicos.

5.8. Relatório sobre a Implementação da Decisão do Conselho de 2019 sobre os Relatórios do Presidente do LTC

Na segunda-feira, o Presidente do Conselho Kula convidou os delegados a tomar nota do relatório (ISBA/26/C/3), acrescentando que o item permaneceria em aberto, uma vez que relatórios adicionais serão apresentados durante a segunda parte da sessão do Conselho ISBA-26.

A Austrália observou a importância da transparência no desenvolvimento do projeto de regulamento de exploração e disse que é fundamental concluir os regulamentos e padrões juridicamente vinculativos como um pacote. A Jamaica observou um aumento no uso de consultores no desenvolvimento de padrões e diretrizes para atividades na Área, incentivando a transparência a esse respeito.

O GRULAC e a Índia elogiaram a constatação do relatório de que nenhum problema de suposta não conformidade por parte dos contratados foi identificado.

O Grupo Africano apelou aos Estados Membros e organizações internacionais para que contribuíssem para o Voluntary Trust Fund para a participação dos países em desenvolvimento. O Brasil anunciou que o país poderia autofinanciar a participação de seu membro do Conselho na próxima reunião do Conselho. A Índia identificou uma necessidade urgente de desenvolver um REMP para o Oceano Índico.

Respondendo a uma pergunta sobre a consideração de assuntos relacionados à Empresa por Eden Charles, Representante Especial do Secretário-Geral para a Empresa, o Secretário-Geral Lodge observou que este item seria abordado na segunda parte da sessão do Conselho ISBA-26. Ele observou ainda que, embora o relatório tenha sido compilado em dezembro de 2019, o trabalho sobre padrões e diretrizes progrediu desde então sob a supervisão do LTC. Ele disse que o trabalho seria revisado pelo LTC em sua próxima reunião e esclareceu que o trabalho estava sendo feito de acordo com o processo e prazos acordados na última sessão do Conselho (ISBA/25/C/19/Add.1). O Conselho tomou então nota do relatório.

5.9. Projeto de Regulamento para Exploração de Recursos Minerais na Área

O projeto de regulamentação de exploração foram discutidos ao longo da semana, com foco tanto no procedimento quanto nas questões substantivas contidas no projeto. Com relação ao procedimento, os delegados se envolveram em discussões informais sobre a melhor forma de avançar o trabalho, dada a natureza extensa do projeto de regulamento de exploração. As discussões substantivas, com base em uma compilação das sugestões dos membros do Conselho da Secretaria sobre o projeto de regulamento de exploração (ISBA/26/C/CRP.1), consideraram três partes: proteção e preservação do ambiente marinho (Parte IV); revisão e modificação do plano de trabalho (Parte V); e planos de encerramento (Parte VI), bem como anexos relacionados (IV, VII e VIII). Além disso, o Conselho também discutiu duas novas propostas relacionadas aos REMPs (ISBA/26/C/6 e 7).

Além do texto base do projeto de regulamento para exploração mineral na Área, também foram discutidas as diretrizes e os padrões vinculantes, em fase de elaboração, conforme demonstrado na figura abaixo:

Overview of the status of preparation of standards and guidelines



5.10. Método de trabalho

Na segunda-feira, o Presidente do Conselho Kula convidou os participantes a centrar as discussões, num ambiente informal, sobre um método de trabalho para prosseguir com o projeto de regulamento de exploração. Ele também solicitou comentários sobre uma nota informativa do presidente do Conselho ISA-25, Lumka Yengeni (África do Sul), contendo uma proposta para estabelecer grupos de trabalho adicionais para facilitar a negociação de questões mais complexas.

As discussões focaram, entre outros: temas que podem ser abordados pelos grupos de trabalho; se deve trabalhar entre sessões e, em caso afirmativo, como; e, se estiver trabalhando em grupos temáticos, como considerar os regulamentos como um todo coerente, inclusive com propostas de REMP, padrões e diretrizes.

Os delegados expressaram amplo acordo com a proposta de estabelecer grupos de trabalho temáticos, com muitos a favor da designação de um facilitador para cada grupo de trabalho para assegurar continuidade além da ISA-26. Vários concordaram que as sessões paralelas de grupos de trabalho deveriam ser evitadas.

O Secretário-Geral Lodge observou os recursos limitados da Secretaria para apoiar serviços adicionais de viagens e reuniões fora de Kingston. Alguns delegados enfatizaram a necessidade de inclusão nos grupos de trabalho, especialmente para não membros do Conselho e observadores.

O Conselho considerou três opções para avançar na agenda:

- primeiro ter um grupo de trabalho informal sobre questões relacionadas às eleições do LTC, depois voltando-se para o projeto de regulamento para exploração mineral no final da semana;
- passando imediatamente para uma discussão plenária informal sobre o projeto de regulamento para exploração; ou
- convocar um grupo de trabalho sobre a proteção do meio marinho, depois de estabelecer três grupos de trabalho sobre os projetos de regulamento com facilitadores nomeados pela Mesa.

Após alguma discussão, o Presidente do Conselho Kula observou que a maioria dos delegados apoiou o ambiente informal em plenário. Na quarta-feira, Kula informou sobre as consultas em andamento dentro de grupos regionais sobre a nomeação de facilitadores para três grupos de trabalho informais sobre aspectos do projeto de regulamento para exploração.

Na quinta-feira, lembrando o processo de redação adotado pela UNCLOS, por meio de grupos de trabalho com mandatos e procedimentos claros, o presidente do Conselho em exercício, Brown, anunciou que o vice-presidente do Conselho da ISA-26, Kenneth Wong (Canadá), facilitaria um grupo de trabalho informal e aberto sobre o método de trabalho. Reportando-se ao grupo, o Facilitador Wong apresentou um documento preliminar, que propunha o estabelecimento de grupos de trabalho informais em três áreas temáticas, observando que eles se reuniriam sequencialmente durante as sessões do Conselho. Ele enfatizou a necessidade de os facilitadores construírem pro-ativamente o consenso nesses grupos. Nas discussões, dois delegados pediram a especificação da Empresa como separada de outros observadores que participam dos procedimentos informais do grupo de trabalho.

Na manhã de sexta-feira, o presidente do Conselho em exercício, Brown, apresentou um projeto de decisão sobre métodos de trabalho para avançar nas discussões sobre o projeto de regulamento para exploração. O Conselho adotou a decisão.

Grupos regionais se ofereceram para facilitar grupos de trabalho informais, como segue: o Grupo Africano sobre inspeção, cumprimento e aplicação; GRULAC sobre assuntos institucionais; e o Grupo Ásia-Pacífico sobre a proteção e preservação do ambiente marinho. O Grupo da Europa Oriental observou que o grupo já estava facilitando as discussões relacionadas à composição do LTC.

Decisão final: Na sua decisão relativa aos métodos de trabalho para avançar nas discussões sobre o projeto de regulamentação para exploração dos recursos minerais na Área (ISBA/26/C/CRP.5), o Conselho:

- decide criar três grupos de trabalho informais com o mandato e as modalidades de trabalho estabelecidas em anexo à decisão;
- decide nomear indivíduos a serem designados pelos grupos regionais; e
- solicita aos facilitadores que relatem o progresso de seu trabalho durante a reunião do Conselho em julho de 2020.

O anexo descreve o mandato e as modalidades de trabalho para os grupos de trabalho informais e o mandato dos facilitadores, incluindo:

- os três grupos de trabalho se concentrarão em: proteção e preservação do ambiente marinho; inspeção, cumprimento e execução; e questões institucionais, incluindo o papel e

as responsabilidades dos vários órgãos da Autoridade, prazos, recurso a peritos independentes e participação de partes interessadas;

- os grupos serão abertos a observadores e outras partes interessadas e serão públicos, salvo decisão em contrário, e se reunirão durante as sessões do Conselho, não havendo reuniões paralelas;
- os facilitadores moderarão as discussões nas sessões do Conselho e, conforme necessário, envidarão os melhores esforços para se comunicar com os participantes de seus respectivos grupos por meio eletrônico durante o período entre as sessões;
- a tarefa dos facilitadores será identificar e construir consenso;
- os facilitadores aplicarão uma abordagem inclusiva, inclusive entrando em contato com os membros do Conselho, outros estados membros da Autoridade, o Representante Especial do Secretário-Geral para a Empresa, observadores e outras partes interessadas para garantir que todos os pontos de vista sejam levados em consideração, conforme apropriado ;
- os facilitadores orientarão a Secretaria na compilação de comentários sobre o projeto de texto, com vistas a preparar um texto revisado, sob sua responsabilidade, para consideração do Conselho;
- os facilitadores consultarão regularmente uns aos outros e a Secretaria para alinhar os métodos de trabalho dos grupos; e
- os facilitadores apresentarão um relatório sobre o trabalho de seus respectivos grupos ao plenário do Conselho.

5.11. Modelo Financeiro:

A questão foi discutida em plenário formal na segunda e terça-feira. O presidente do Conselho, Kula, introduziu discussões sobre o projeto de regulamento para exploração. Ele observou que o relatório do OEWG sobre o Modelo Financeiro estava atualmente disponível em inglês ([ISBA/25/C/8](#)).

O presidente do OEWG, Olav Myklebust (Noruega), relatou os resultados da terceira reunião do Grupo, realizada de 13 a 14 de fevereiro de 2020, lembrando ao Conselho que a segunda reunião do Grupo considerou três mecanismos de pagamento e concordou em explorar uma quarta opção, a ser desenvolvida com o apoio do Instituto de Tecnologia de Massachusetts (MIT). Ele delineou as quatro opções:

- um mecanismo de royalties *ad valorem* de taxa fixa;
- um mecanismo de royalties somente *ad valorem* em dois estágios;
- um sistema combinado de royalties *ad valorem* e baseado em lucro; e
- um sistema progressivo de royalties *ad valorem*.

O presidente Myklebust destacou as recomendações do relatório e observou que o Grupo de Trabalho não endossou ou descartou totalmente nenhuma das quatro opções. Ele disse que as recomendações do relatório incluem um pedido ao Secretariado para refinar ainda mais o mecanismo de royalties *ad valorem* de dois estágios e o sistema de royalties *ad valorem* progressivo. Ele acrescentou que as recomendações também incluem um pedido à Secretaria para fornecer um estudo comparativo da mineração no fundo do mar e mineração terrestre.

O Grupo Africano expressou preocupação com o fato de os consultores do MIT não terem considerado as propostas de seu grupo. Afirmou que as taxas do regime de pagamento devem garantir que a mineração em alto mar ocorra apenas se: for comprovadamente benéfica para a humanidade; resulta em taxas de pagamento na faixa daquelas prevalecentes para mineração em terra; e resulta em

receitas suficientemente altas para a Autoridade para compensar os mineiros terrestres por qualquer perda de receita devido aos preços mais baixos do metal. Ele pediu transparência, solicitando que todos os estados patrocinadores e contratados publiquem seus contratos, incluindo detalhes de impostos, taxas e royalties.

África do Sul alegou que um modelo de participação nos lucros deve continuar a ser considerado e discordou da sugestão do relatório de que um modelo *ad valorem* é justo sem uma taxa de royalties especificada. Ele disse que uma taxa de royalties deve estar na faixa de 40-70%, e que uma faixa de 2-6% não é aceitável. O Canadá reconheceu que os modelos não são perfeitos e disse que um simples mecanismo de royalties *ad valorem* de taxa fixa ajudaria a acumular benefícios para a humanidade.

Nauru, Austrália e Itália expressaram preferência por um modelo somente *ad valorem*, em vez de um sistema baseado em lucro, e notaram a necessidade de um maior refinamento dos modelos. Espanha, Cingapura e Reino Unido apoiaram um sistema progressivo *ad valorem*.

Federação Russa, Nigéria e Japão enfatizaram que nenhuma opção de pagamento deve ser removida neste momento e, com China, Brasil, Reino Unido, Alemanha e outros, apoiaram uma quarta reunião do OEWG antes da segunda parte da sessão do Conselho ISBA-26. A China identificou a falta de estudos abrangentes sobre as modalidades de pagamento. Apelando para a repartição equitativa de benefícios financeiros e outros benefícios econômicos, Trinidad e Tobago disse que os parâmetros devem ser claramente articulados antes que um modelo seja adotado.

Alemanha, com a Itália, destacou a necessidade de maior consideração dos custos ambientais nos modelos. A Costa Rica pediu qualquer modelo financeiro para garantir que as taxas e retornos de royalties forneçam uma compensação “genuína e justa” por danos ao patrimônio comum da humanidade. Afirmando que o meio ambiente é “subvalorizado” nos modelos desenvolvidos pelo MIT, o DSCC questionou a atual viabilidade econômica da mineração em alto mar à luz dos riscos para a biodiversidade, recursos genéticos marinhos e equidade regional. O Senegal pediu maior transparência e justiça nas discussões sobre repartição partilha de benefícios.

Observando a necessidade de um modelo de pagamento justo para os contratados, a Índia apoiou uma recomendação para compilar informações sobre a responsabilidade financeira dos contratados. A República da Coreia recordou que, nos termos do anexo relacionado com a parte XI da UNCLOS, os sistemas de pagamento podem ser revistos mediante acordo entre o Órgão de Fiscalização e o contratante.

O Representante Especial do Secretário-Geral da Empresa, Eden Charles, sugeriu aprender com as melhores práticas em contratos financeiros de outras organizações internacionais, como o Banco Mundial.

A Mining Standards International observou, entre outras coisas, a necessidade de considerar que o desenvolvimento de minerais do fundo do mar oferece um benefício econômico crítico para a humanidade e oportunidades para os países em desenvolvimento, por meio de seu papel no apoio à transição verde.

Resultado: Seguindo as recomendações contidas em ISBA/25/C/8, o Conselho concordou em:

- convocar uma quarta reunião do OEWG, de preferência antes da segunda parte do ISA-26 para avançar ainda mais os trabalhos sobre os mecanismos de pagamento de nódulos polimetálicos como prioridade;
- convidar todas as partes interessadas a enviar comentários à Secretaria até 23 de março de 2020 para refinar ainda mais as premissas do modelo;
- solicitar ao Secretariado que prepare um relatório para refinar ainda mais o royalty *ad valorem* fixo em dois estágios e o royalty *ad valorem* progressivo em dois estágios; e

- solicitar ao Secretariado que prepare uma análise comparativa do fundo do mar e da mineração terrestre a ser divulgada pelo menos 14 dias antes da próxima reunião.

5.12. Proteção e Preservação do Meio Marinho (Parte IV e Anexo IV):

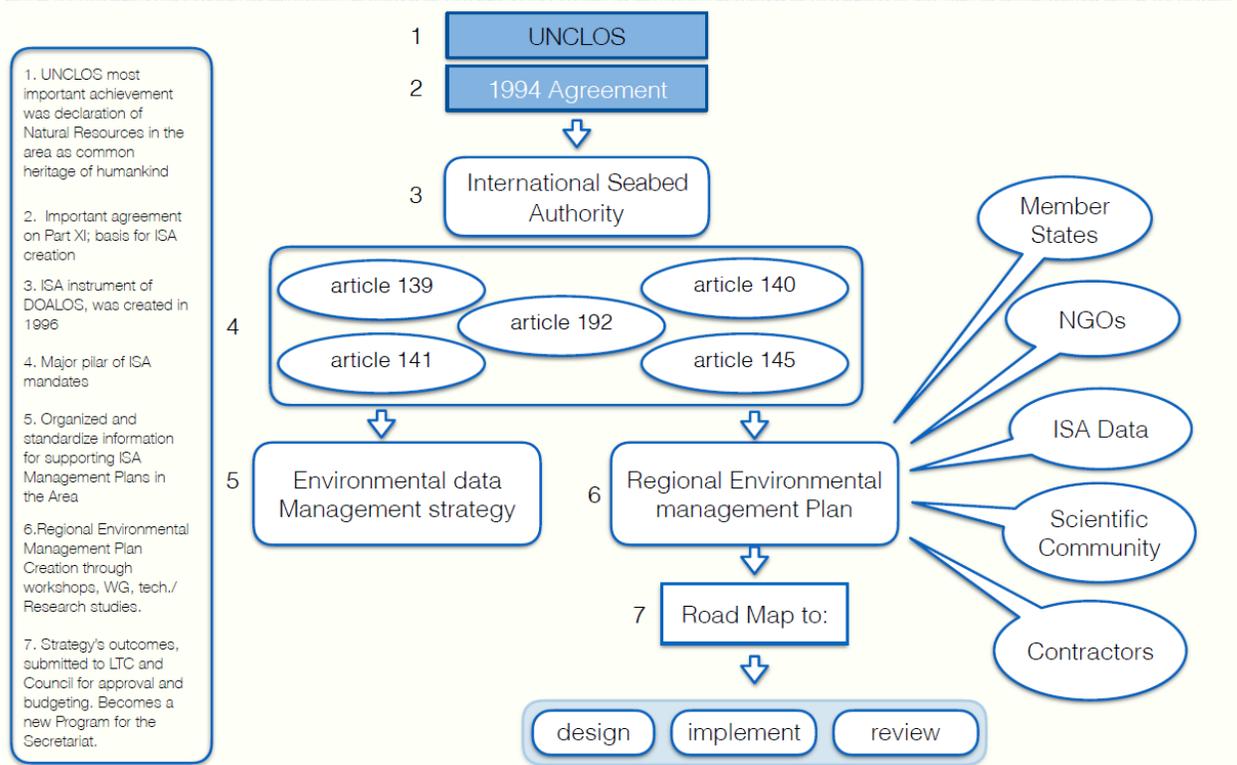
Esta questão foi discutida em sessões plenárias informais de terça a sexta-feira. O Secretário-Geral Lodge apresentou os documentos relevantes, observando que o principal documento em discussão era o projeto de regulamento de exploração preparado pelo LTC (ISBA/25/C/WP.1), complementado pelo projeto de regulamento com um agrupamento de sugestões de redação de membros do Conselho (ISBA/26/C/CRP.1).

Delegados destacaram que “nada está acordado até que tudo esteja acordado”. O Presidente do Conselho Kula explicou que o Secretariado estava a registrar as intervenções. A presidente interina do Conselho, Brown, esclareceu que trabalharia com a Secretaria para transmitir as contribuições das discussões sobre a proteção e preservação do ambiente marinho ao facilitador do Grupo Ásia-Pacífico.

Sobre as obrigações gerais, os delegados expressaram diferentes preferências quanto a se referir à “abordagem” da precaução, conforme estabelecido na Declaração do Rio (1992), ou ao “princípio” da precaução como um conceito juridicamente vinculativo. Alguns delegados indicaram que não era necessário acrescentar referências à proteção e preservação ou a ecossistemas específicos, uma vez que já são abordados em outros lugares. Os pontos de vista também divergiram sobre se referir à avaliação e gestão de risco de dano como a “proteção e preservação” ou como a “proteção, conservação e, quando aplicável, restauração” do ambiente marinho.

A questão dos REMPs foi considerada de quarta a sexta-feira. Em um parágrafo adicional proposto sobre REMPs na Parte IV do projeto de regulamento de exploração, o Presidente do Conselho Kula sugeriu que os delegados considerem simultaneamente duas propostas apresentadas pela Alemanha e Holanda, e co-patrocinadas pela Costa Rica, sobre um procedimento para o desenvolvimento, aprovação e revisão de REMPs (ISBA/26/C/6) e em um modelo com requisitos mínimos para REMPs (ISBA/26/C/7).

Regional Environmental Management Plan Strategy



Apresentando as propostas e descrevendo os REMPs como um pilar essencial do código de exploração, a Alemanha explicou que as duas submissões foram baseadas em um workshop de REMPs em novembro de 2019 em Hamburgo, Alemanha, alegando que o procedimento e o modelo propostos: baseiam-se no trabalho da ISA, garantindo a administração pelo Conselho e pelo LTC; e estão alinhados com o mandato do LTC de estabelecer pequenos grupos ad hoc não permanentes de especialistas para se reunir sob termos de referência claros por períodos limitados de tempo para auxiliar o trabalho do LTC.

Como co-proponente, a Holanda explicou que as propostas devem ser entendidas como parte da política ambiental abrangente da ISBA e visam fortalecer as orientações existentes preparadas pela Secretaria da ISBA. Como co-patrocinadora, a Costa Rica enfatizou a necessidade de uma abordagem padronizada para todos os REMPs.

O atual processo adotado pela ISBA para desenvolver REMPs é executado por meio de oficinas regionais lideradas pelo LTC.

Parte dos delegados solicitou que os REMPs fossem obrigatórios e juridicamente vinculativos, e outros disseram que deveriam estar em vigor antes de conceder contratos de exploração. Os delegados sugeriram que os REMPs incluam: ferramentas de gestão por área; disposições para catalogar espécies em uma região para desenvolver linhas de base adequadas; e exige que a mineração seja gerenciada para evitar a perda de biodiversidade.

Também observaram que um processo padronizado é fundamental para garantir um caminho replicável, transparente e inclusivo para a elaboração de REMPs e para a boa governança e transparência na proteção do ambiente marinho.

Costa Rica observou que os esforços em REMPs sob o ISBA devem ser desenvolvidos de acordo e em colaboração com as negociações em andamento sobre um instrumento juridicamente vinculativo sobre a conservação e uso sustentável da diversidade biológica marinha de áreas além da jurisdição nacional (BBNJ). Um destacou, em particular, o papel das organizações regionais de gestão da pesca e os impactos cumulativos nas avaliações de impacto ambiental (EIAs).

Em resposta a perguntas, o secretário-geral Lodge disse que o LTC está desenvolvendo o processo para trabalhar em REMPs e acrescentou que os delegados podem considerar questões de supervisão do Conselho.

O Conselho designou um pequeno grupo, liderado pela Alemanha, para trabalhar nesta matéria com vista a voltar a esta questão em plenário. Na quinta-feira, a Alemanha informou que havia circulado um projeto de decisão (**ISBA/26/C/CRP.4**) sobre o trabalho adicional sobre a questão.

Observando amplo apoio às propostas, um grupo regional, apoiado por muitos, solicitou a exclusão de uma referência a “conforme apropriado”, com relação a um parágrafo que faz referência ao LTC, levando em consideração as propostas no desenvolvimento das orientações dos REMPs.

Na manhã de **sexta-feira**, os delegados concordaram em adotar o projeto de decisão sobre REMPs como inicialmente proposto, sem emendas.

Decisão Final: Em sua decisão (**ISBA/26/C/CRP.4**), o Conselho, notando que considerou propostas sobre um procedimento para o desenvolvimento, aprovação e revisão de REMPs (**ISBA/26/C/6**) e sobre um modelo com requisitos mínimos para REMPs (**ISBA/26/C/7**):

- solicita ao LTC, em consulta com o Comitê Financeiro, se necessário, para desenvolver ainda mais a "Orientação para facilitar o desenvolvimento de REMPs", de acordo com a UNCLOS, o Acordo relativo à implementação da Parte XI da UNCLOS, bem como as regras, regulamentos e procedimentos da ISA e tendo em conta, se for caso disso, estas propostas com vista a recomendar ao Conselho uma abordagem normalizada que inclua um modelo com elementos indicativos; e
- solicita ao LTC que relate o progresso feito em seu trabalho sobre esta questão na próxima reunião do Conselho em julho de 2020.

Adicionalmente, foi apresentada proposta no plano de gerenciamento e monitoramento ambiental (**EMMP**), referente ao número mínimo de partes específicas do modelo.

Alguns delegados notaram que as referências atuais no texto para “orientação” sinalizavam que o modelo não seria juridicamente vinculativo. Foi esclarecido que nem as diretrizes, nem os REMPs, são juridicamente vinculativos e questionou a referência ao cumprimento.

Em uma seção sobre acordos internacionais e regionais aplicáveis, vários delegados pediram para incluir referência a outros acordos internacionais relevantes. Alguns pediram uma referência às negociações do BBNJ, embora essa adição tenha sido contestada por um representante que observou que as negociações em andamento significam que o BBNJ ainda não constitui um acordo internacional.

Sobre questões socioeconômicas, um delegado propôs incluir uma nova seção sobre cabos submarinos e outros usos existentes, indicando que qualquer operador que possua um cabo deve ser reconhecido no processo de avaliação.

Sobre o EMMP relacionado à teste de mineração, os delegados trocaram várias opiniões sobre uma proposta de regulamento adicional. Várias delegações enfatizaram que o mining test ainda é mineração e deve ser totalmente regulamentada sob o projeto de regulamentos de exploração, enquanto

outras indicaram que deveria ser considerada como parte da exploração. Embora reconhecendo as informações potenciais obtidas antes de se envolver em uma atividade comercial, um delegado disse que o envolvimento no teste de mineração em estágio inicial não deve evitar a necessidade de um EIA. Os delegados sugeriram várias maneiras de definir o teste de mineração, como: duração ou escala das operações, incluindo se as operações são sustentadas; quantidade de materiais extraídos; tamanho da área ou distância em que as operações ocorrem; ou perturbação causada a uma área. Um delegado sugeriu exigir um EIA antes de obter uma licença de exploração. Outro apontou para os regulamentos de prospecção e exploração da ISBA, que se referem a “testes de sistemas de coleta e operações de processamento”. Um participante indicou que os testes operacionais sob o EIA devem ser suficientes para atender aos requisitos e que a mineração de teste pode ser cara, burocrática e causar atrasos. Um apoiou a inclusão de regulamentos para prevenir e mitigar danos graves e se opôs à exigência de mineração de teste para cada projeto, observando que a mineração de teste em si pode causar sérios danos e, portanto, deve ser limitada em escala.

Sobre o controle da poluição, um participante, apoiado por outros, pediu a inclusão de referências ao lixo marinho e ao ruído subaquático. O presidente interino do Conselho, Brown, lembrou as discussões anteriores sobre coerência e consistência entre os processos da ISA e BBNJ. Sobre o relacionamento da ISBA com outras convenções internacionais relevantes, como a Convenção Internacional para a Prevenção da Poluição por Navios (MARPOL) e a Convenção de Londres sobre a Prevenção da Poluição Marinha, ela lembrou os participantes de um documento da ISA de 2019 sobre as “Competências da Seabed Authority e Organização Marítima Internacional no contexto das atividades na Área.” Um grande número de delegados apontou para a importância de acompanhar e alinhar com o trabalho no BBNJ, com Costa Rica sugerindo que qualquer processo que termine primeiro definirá as coisas para o outro. Outro enfatizou a necessidade de uma política integrada dos oceanos.

Sobre restrições às descargas de mineração, no texto de que a regulamentação de descargas não se aplica a descargas para segurança de embarcações ou da vida humana, desde que todas as medidas razoáveis sejam tomadas para minimizar a probabilidade de “graves danos” ao meio ambiente marinho. Um delegado solicitou a referência de que este trabalho fosse feito de acordo com os REMPs, com outro delegado indicando que tal especificação não seria necessária se os REMPs fossem juridicamente vinculativos, conforme implícito na referência.

Os participantes discutiram a consistência e as disposições da Organização Marítima Internacional e da Convenção de Londres sobre questões incluídas neste projeto de regulamento, inclusive sobre a definição de poluição.

Em relação às avaliações de desempenho do EMMP, alguns dos participantes defenderam que estas deveriam ser conduzidas pela Autoridade, não pelo contratante, com alguns sugerindo que este trabalho também poderia ser realizado pelo LTC, um grupo de especialistas ou um terceiro independente.

Um grupo regional pediu que o cronograma de avaliações de desempenho fosse estabelecido nos regulamentos, e não por empreiteiros. O grupo também solicitou que o ISA seja encarregado de avaliações de desempenho e tenha poderes para solicitar avaliações ad hoc, se necessário. Alguns solicitaram que este trabalho fosse feito de acordo com os REMPs, com um enfatizando que os REMPs deveriam ser juridicamente vinculativos.

Os delegados fizeram perguntas sobre a operação e prescreveram a porcentagem de um fundo de compensação ambiental proposto. Um delegado saudou a referência a comunidades vulneráveis e pediu que se referisse especificamente a Povos Indígenas e comunidades locais que residem em estados costeiros adjacentes e que provavelmente serão impactados. Um grupo regional pediu regras claras de governança, incluindo: como o fundo pode ser financiado; como os juros serão administrados; modalidades de reembolso; processos de acesso ao fundo; o padrão de prova exigido; e tipos de danos

cobertos. Uma delegação solicitou que o fundo estivesse “em funcionamento” até o início das atividades de exploração e que incluísse um prazo para o estabelecimento das regras e procedimentos do fundo.

Muitos participantes indicaram que o fundo deveria se concentrar em lacunas de compensação e responsabilidade, com vários delegados sugerindo que outro fundo poderia ser criado para lidar com algumas das outras questões propostas, incluindo mitigação. Muitos apontaram para uma proposta de criação de um fundo de pesquisa e educação ambiental, com vários indicando que este, se estabelecido separadamente, não deve retirar o financiamento do fundo de compensação ambiental ou diminuir sua importância. Uma delegação, contrariada por um grupo regional, sugeriu a exclusão de uma referência a programas de educação e treinamento de uma lista de objetivos do fundo.

Vários delegados sugeriram que os propósitos mais amplos articulados vão além do fundo de compensação ambiental proposto. Um delegado, apoiado por muitos, sugeriu a criação de um segundo fundo que poderia ser chamado de “fundo de sustentabilidade” para atender aos objetivos mais amplos. Outro disse que o escopo de tal fundo poderia incluir impactos além dos identificados nos planos de trabalho. Outro delegado indicou que a restauração deve ser tratada dentro do plano de cada projeto, apontando para a responsabilidade do empreiteiro.

Sobre a finalidade do fundo de compensação ambiental, um delegado solicitou esclarecimentos sobre se, entre outros: o fundo se baseia no princípio do poluidor-pagador; os fundos devem ser pagos no início ou avaliados durante a mineração; e os estados costeiros afetados serão envolvidos nas decisões sobre como usar os fundos.

As discussões também se concentraram na linguagem para exigir remediação, bem como limitar, os danos decorrentes das atividades na Área e no financiamento da pesquisa e monitoramento dos efeitos cumulativos.

Em relação ao financiamento, delegados enfatizaram que era importante indicar que o financiamento virá das atividades dos contratantes. Alguns expressaram preocupação de que levantar fundos de atividades em andamento possa levar a subfinanciamento, com dois destacando que a quantificação, a mecânica e o design do fundo levarão tempo.

5.13. Revisão e modificação de um plano de trabalho (Parte V e Anexo VII):

Várias delegações pediram supervisão pelo Conselho e LTC de modificações de planos de trabalho, observando que isso não deve ser deixado exclusivamente para o Secretário-Geral, e propôs um procedimento de notificação para orientar este processo. Um sugeriu que o Secretário-Geral informasse o Conselho sobre qualquer modificação do plano de trabalho. Outros também enfatizaram que mudanças materiais nos planos de trabalho devem ser guiadas por padrões juridicamente vinculantes, em oposição a diretrizes. Alguns observaram que a Autoridade também deveria poder modificar os planos de trabalho. Vários outros apoiaram referências a impactos cumulativos, com alguns sugerindo a inclusão de uma referência específica às mudanças climáticas e à acidificação dos oceanos; e muitas referências de apoio a estados costeiros adjacentes.

5.14. Planos de Fechamento (Parte VI e Anexo VIII):

Uma das delegações apoiou a obrigatoriedade da participação pública no desenvolvimento de planos de fechamento, observando também que o cronograma proposto de 12 meses pode precisar ser revisado. No anexo, um delegado saudou o texto e sua abordagem para estabelecer o processo de encerramento. Referindo-se às referências à restauração e remediação, um observador pediu para especificar que isso só seria exigido quando justificado pela ciência ambiental aplicável.

5.15. Próximos Passos e Encerramento da Reunião

Na tarde de sexta-feira, um delegado pediu à Secretaria que fornecesse uma versão corrigida do projeto de regulamentação de exploração com todos os comentários com atribuições. O presidente interino do Conselho Brown reconheceu que teria sido útil ter uma versão marcada do texto com todos os comentários, incluindo aqueles de não membros do Conselho e observadores.

O Presidente do Conselho em exercício Brown indicou que a Secretaria tomou notas detalhadas e geraria um novo texto sintetizando as discussões trabalhando em conjunto com os respectivos facilitadores, uma vez nomeados. Brown expressou disposição para trabalhar em conjunto com outros membros da Repartição para garantir uma transição suave e que a documentação seja fornecida em tempo hábil.

Reconhecendo o seu papel particular nos serviços de conferência e o bom funcionamento da Autoridade, o Conselho reconheceu a membro cessante do Secretariado Ena Harvey pelos seus 21 anos de serviço à ISA.

A Jamaica agradeceu à Presidente do Conselho Interino por sua liderança, observando que o Conselho havia adotado três decisões que permitem que o trabalho prossiga, inclusive entre as sessões. Ela também agradeceu ao Secretariado, aos serviços da reunião e a todos os participantes, dando as boas-vindas aos delegados de volta ao país para a segunda parte da ISA-26 em julho de 2020. Brown então encerrou a reunião às 16h41.

VI – Conclusões

A maioria dos participantes esperava passar a semana em negociações detalhadas sobre um rascunho completo do regulamento para exploração mineral na Area, encaminhado ao Conselho pela Comissão Jurídica e Técnica (LTC). Em vez disso, os delegados se viram envolvidos em debates processuais e procedimentos, pois questões relacionadas à eleição e composição do LTC dominaram as discussões, juntamente com questões de como organizar o trabalho sobre o projeto de regulamento.

As discussões sobre as regras e critérios para a eleição de membros do LTC que representassem as regiões de forma justa e que garantissem especialização relevante, questão de longa data para a ISBA, revelaram preocupações sobre a real participação e influência da LTC. Isto porque, a LTC não apenas realiza um trabalho técnico, mas também é politicamente e processualmente poderoso, pois com a maioria de dois terços exigida no Conselho para derrubar qualquer de suas Recomendações.

O posicionamento da maioria dos representantes dos países indicou que os atrasos não eram mais aceitáveis e que a confiança em uma distribuição regional e equitativa dos membros da LTC é necessária para restaurar a confiança mútua para permitir que as negociações avancem. De acordo com estes membros da Autoridade, principalmente do Grupo Africano e GRULAC, a distribuição e representação geográfica equitativa é uma prioridade. Alguns destacaram que qualquer critério que priorizasse a especialização sobre a distribuição geográfica, como implicando que certas regiões podem não ter a especialização necessária para a Comissão, refletia uma visão desatualizada da distribuição global de conhecimento jurídico e técnico.

Embora os delegados não tenham conseguido chegar a um acordo sobre um modelo definitivo para o número de representantes e seus critérios de alocação, discussões informais a portas fechadas resultaram em um compromisso que permitiu o prosseguimento de discussões. Este acordo estabelece um processo para projetar um “mecanismo” para a eleição e define parâmetros-chave, incluindo distribuição geográfica equitativa. Mas alguns admitiram que a decisão só deu mais tempo ao Conselho, deixando as tensões subjacentes sobre a representação sem solução.

Obtendo os royalties certos: modelos financeiros

No centro da sessão do Conselho ISBA-26 está um acordo sobre os regulamentos de exploração. O progresso rápido é uma prioridade para muitos estados patrocinadores e outros que esperam o vencimento de alguns contratos de exploração em 2021, que já foram prorrogados de seu período inicial de 15 anos. Alguns observadores da ISBA-26 destacaram disposições do Anexo ao Acordo de Implementação de 1994 que, em seu entendimento, permitem que os nacionais dos Estados patrocinadores solicitem a aprovação de um plano de trabalho e prossigam após um período de dois anos, mesmo na ausência de projetos de regulamento acordados em comum. Enquanto aqueles preocupados com os impactos ambientais da mineração no fundo do mar estão cautelosos com esse cenário, outros apontaram que pelo menos algumas empresas de mineração menores provavelmente não seguiriam em frente sem o código de exploração em vigor, pois no caso de negócios voltados à mineração requer certeza regulatória, que somente o projeto regulamento em discussão podem fornecer.

Antes da reunião, o Secretariado circulou um conjunto de comentários sobre o projeto de regulamento para exploração mineral na Área, elaborado pela LTC (ISBA/26/C/2). No início da semana, quando os delegados discutiam a melhor forma de lidar com a carga de trabalho, houve um amplo consenso de que há cinco áreas temáticas centrais no projeto de regulamento: modelos financeiros; responsabilidade e obrigação; proteção e preservação do meio marinho; inspeção, cumprimento e execução; e assuntos institucionais. As duas primeiras áreas já foram consideradas por vários órgãos da ISBA, enquanto, no início da sessão do Conselho ISBA-26, as três últimas ainda exigiam maior aprofundamento. Embora a responsabilidade por danos ambientais não tenha sido o foco desta sessão, ela continua a ser abordada em reuniões da LTC a portas fechadas, informadas por um Grupo de Trabalho Jurídico sobre Responsabilidade por Danos Ambientais de Atividades na Área. O maior progresso foi feito em modelos financeiros, que foram objeto de discussões contenciosas em um Grupo de Trabalho Aberto (OEWG).

O estabelecimento de um modelo financeiro para a exploração tem sido prioridade para o ISBA, com o objetivo de desenvolver um modelo direto, fácil de entender e transparente. Em 2014, um estudo comparativo foi lançado pela Secretaria como um documento de trabalho sobre o desenvolvimento de termos financeiros para a exploração de mineração em alto mar. Consultores do Instituto de Tecnologia de Massachusetts (MIT) foram então contratados para elaborar opções para um mecanismo financeiro a ser considerado pelo OEWG. Inicialmente, eles foram convidados a explorar três opções: dois modelos de pagamento de royalties foram baseados em uma abordagem *ad valorem*, onde os royalties são pagos na proporção do valor estimado dos minerais, com os modelos diferindo nas taxas de retorno ao longo do tempo (*fixed-rate* e dois estágios); enquanto o outro considerou uma abordagem conjunta *ad valorem* e baseada no lucro. A equipe do MIT foi solicitada a delinear uma quarta opção para consideração, apresentada na última reunião do OEWG, para um modelo *ad valorem* com uma taxa de royalties progressiva. Na Parte 1 da Sessão 26 da ISBA, o Conselho aprovou um projeto de decisão para, entre outras coisas, convocar outra reunião do OEWG e continuar refinando dois dos modelos financeiros propostos. Embora os delegados não estivessem dispostos a tirar qualquer modelo da mesa, com alguns ainda interessados em modelos híbridos baseados em lucro e opções *ad valorem* de taxa fixa, eles concordaram que a Secretaria deveria concentrar seus esforços em refinar dois modelos *ad valorem* variáveis envolvendo duas estágios e opções progressivas para pagamentos. Embora os delegados ainda pareçam estar longe de chegar a um acordo sobre o modelo financeiro – incluindo grandes diferenças de perspectivas sobre a escala de taxas de royalties que devem ser acumuladas pela ISBA (em vez de estados patrocinadores).

Segundo alguns delegados, o foco da ISBA nos modelos de pagamento reflete a forma “predominante” como a ISBA tem interpretado o conceito de patrimônio comum da humanidade. Até o momento, muitos acham que houve mais ênfase em decidir como compartilhar os retornos financeiros

da mineração potencial no fundo do mar, enquanto os aspectos menos quantificáveis da sustentabilidade ambiental e social receberam menos atenção.

Vários delegados salientaram que, embora o foco do trabalho da ISBA no passado tenha sido nas finanças, eles foram encorajados pelo Conselho a voltar sua atenção para a proteção ambiental. As discussões sobre proteção ambiental revelaram uma mudança para uma compreensão mais ampla do patrimônio comum, com a ISBA instada por um número crescente de Estados e observadores a interpretar o princípio em termos de um conjunto mais amplo de valores não financeiros, da biodiversidade e serviços ecossistêmicos a elementos sociais e culturais.

Muitos reconheceram como a proteção ambiental está se tornando cada vez mais central no trabalho da ISBA. Uma vez em curso, o Conselho conseguiu rever toda a seção relativa à regulamentação sobre a proteção e preservação do meio marinho (Parte IV), juntamente com os planos de trabalho das seções (Parte V) e os planos de encerramento (Parte VI) e respectivos anexos, em pouco mais de dois dias.

Foram consideradas “discussões mais produtivas” da 1ª parte da Sessão do Conselho ISBA-26, aquelas em torno dos planos regionais de gestão ambiental (REMPs). Os delegados se envolveram em um debate sobre as propostas da Alemanha, Holanda e Costa Rica para uma abordagem mais padronizada desses planos, incluindo um modelo de requisitos mínimos para REMPs. Em sessões plenárias informais, os delegados expressaram amplo acordo sobre a importância dos REMPs em geral. No entanto, surgiram visões divergentes sobre a natureza e a forma desses planos, especialmente sobre se eles devem ser juridicamente vinculativos e incorporados às regulamentações de exploração ou se devem assumir a forma de diretrizes. A questão dos REMPs foi delegada ao LTC para novos trabalhos, pois trata de questões regulatórias significativas.

As três decisões tomadas nesta reunião abrem caminho para mais trabalho substantivo antes e na segunda sessão do Conselho da ISBA-26, em julho de 2020. Em primeiro lugar, o Conselho traçou um caminho a seguir para suas negociações sobre o projeto de regulamento de exploração, resolvendo algumas questões complexas sobre como organizar grupos de trabalho nas demais áreas temáticas, limitando o trabalho eletrônico inter-sessões e evitando reuniões paralelas para permitir ampla participação. Em segundo lugar, como muitos apontaram, a decisão do Conselho sobre as eleições do LTC deixou questões importantes sem solução. As expectativas permaneceram altas de que o acordo sobre o trabalho inter-sessional sobre um projeto de mecanismo para o LTC possa permitir um compromisso entre posições opostas e permitir que uma decisão final seja tomada em julho. Em terceiro lugar, algumas delegações expressaram entusiasmo pelos “resultados positivos” na primeira leitura do regulamento de proteção ambiental, inclusive sobre os REMPs com trabalho futuro para o LTC.

VII – Recomendações

Tendo em vista o aprofundamento sobre as questões ambientais que deverão integrar o corpo e os anexos do projeto de Código de Exploração em discussão, a delegação brasileira deveria contar nas sessões do Conselho da ISBA, além de auxílio jurídico e técnico, com especialistas em exploração mineral nos fundos marinhos.

Como estão sendo discutidos diversos projetos de normas que irão interferir nas atividades do Brasil em áreas internacionais e, indiretamente, influenciar na regulamentação de atividades de exploração mineral nos fundos marinhos, em qualquer região, o Brasil deverá acompanhar de perto as discussões em todos os fóruns da ISBA, apresentando, regulamente, sugestões e proposições aos textos em discussão.

Considerando a segunda parte da 26ª sessão do Conselho em julho, é necessário avançar no consenso sobre as questões relacionadas à composição e eleição dos membros da LTC e destacar a

importância de reservar tempo suficiente para continuar o trabalho sobre o projeto de regulamento para exploração mineral na Area.

Rio de Janeiro, 18 de maio de 2022.

Claudia Maria Rezende de Souza
Coordenadora - DGM

LIST OF DELEGATIONS

COUNCIL, PART 1

26TH SESSION

ARGENTINA

Representatives

Mr. Luis del Solar Dorrego, Ambassador, Permanent Representative to the International Seabed Authority
Mr. Patricio Uruena Palacio, Deputy Permanent Representative to the International Seabed Authority

AUSTRALIA

Representatives

Mr. Andrew Ran Cong
M. Nicole Louise Lyas

BANGLADESH

Representative

Mr. Md Hasan Abdullah Towhid, Senior Assistant Secretary, Maritime Affairs Unit, Ministry of Foreign Affairs, Dhaka

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H.E. Mr. Carlos Alberto Michaelsen den Hartog, Ambassador, Permanent Representative to the International Seabed Authority (Head of delegation)
Mr. Renato de Alencar Lima, Counsellor, Embassy in Kingston
Mr. José Luiz Ubaldino de Lima, Head, Office for Geology and Mineral Resources, Ministry of Mines and Energy
Ms. Claudia Maria Rezende de Souza, Executive-Coordinator, Department of Geology, Geological Survey of Brazil (CPRM)

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Mr. Ahidjo, Second Counselor, Permanent Mission to the United Nations

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Mr. Kenneth Wong, Legal Officer, Continental Shelf Division, Department of Foreign Affairs, Trade and Development (Head of delegation)
Ms. Laurie Peters, High Commissioner and Non-resident Consul General, High Commissioner to Jamaica

Mr. Andrew McMaster, Assistant Director, Global and Northern Affairs Bureau, Department of Fisheries and Oceans
Mr. James Lauer, Manager, Tax Administration and Kimberley Process Program (Lands and Mineral Sector) Department of Natural Resources

CHILE

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Sr. Francisco J. Bernales, Embajador, Representante Permanente ante la Autoridad de los Fondos Marinos (Jefe de delegación)
Sr. Roberto Álvarez, Ministro Consejero, Embajada en Jamaica
Sr. Cristian Piña, Tercer Secretario, Embajada en Jamaica

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H. E. Mr. Qi Tian, Representative, Permanent Mission to the International Seabed Authority (Head of delegation)
Mr. Wenxu Yang, Political Counselor, Embassy in Jamaica
Mr. Jun Jiang, Deputy Representative, Permanent Mission to the International Seabed Authority
Mr. Shaowu, Xia, First Secretary, Ministry of Foreign Affairs
Mr. Xiang Gao, Third Secretary, Permanent Mission to the International Seabed Authority
Ms. Duo Jiang, Attaché, Ministry of Commerce
Ms. Mengjun Li, Attaché, Ministry of Foreign Affairs

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Mr. Craig William Strong, Acting Permanent Secretary, Ministry of Lands and Mineral Resources (Head of delegation)
Dr. Satyendra Prasad, Ambassador, Permanent Representative to the United Nations
Ms. Rajjeli Taga, Deputy Secretary, Ministry of Lands and Mineral Resources
Mr. Gene Bai, First Secretary, Mission in New York

FRANCE

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M. M. Denys Wibaux, Ambassadeur, Représentant permanent de l’Autorité internationale des fonds marins (Chef de délégation)
M. Didier Pierre Ortolland, Sous-directeur du droit de la mer, du droit fluvial et des pôles, direction des affaires juridiques, Ministère de l’Europe et des Affaires étrangères (Adjoint au Chef de délégation)

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Alternate Representative

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Advisors

Dr. Ingo Narberhaus, Deputy Head of Division, Federal Ministry for the Environment , Nature Conservation, Building and Nuclear Safety Bonn

Dr. Carsten Rühlemann, Head of Working Section “Marine Geology, Deepsea Mining,” Federal Institute for Geosciences and Natural Resources, Hanover

Mr. Hans-Peter Damian, Deputy Head of Division, Federal Environment Agency, Dessau

Mr. Julian Wilckens, Desk Officer/Legal Adviser, Forschungszentrum Juelich, On behalf of the Federal Ministry of Education and Research, Bonn

Mr. Kurt Machetanz, Deputy Head of Division, State Authority of Lower Saxony for Mining, Energy and Geology, Clausthal-Zellerfeld

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Ms. Nana Adusei Poku, Lead Geomatic Engineer, National Petroleum Corporation (GNPC), Accra

Mr. Emmanuel Kaku Anyimiah, National Petroleum Corporation (GNPC), Accra

Mr. Noah Awuntigi, Ministry of Energy, Accra

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Mr. Widya Sadnovic, Counsellor, Permanent Mission to the United Nations, New York
Mr. Ali Andika Wardhana, First Secretary, Permanent Mission to the United Nations, New York
Mr. Muhammad Taufan, First Secretary, Permanent Mission to the United Nations, New York
Mr. Aloysius Sewas Taborat, Second Secretary, Permanent Mission to the United Nations, New York

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Mr. Marcello Iocca, Researcher, Ministry of Economic Development
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Ms. Michelle Walker, Deputy Permanent Representative to the International Seabed Authority
Mr. A'Dale Robinson, Ambassador, Permanent Mission to the International Seabed Authority

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Mr. Suresh Bhalai, Director, Economic Minerals Unit, Mines and Geology Division
Mr. Bertrand Smith, Director, Legal Affairs, Maritime Authority
Ms. Cynthia Edwards, Manager, Cadastral Mapping, National Land Agency
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Ms. Alicia Taylor, Foreign Service Officer, Ministry of Foreign Affairs and Foreign Trade
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Ms. Samantha Braidy, Legal Officer, Ministry of Foreign Affairs and Foreign Trade
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Mr. Hikari Hino, Japan Oil, Gas and Metals National Corporation
Mr. Shingo Sugimoto, Deep Ocean Resources Development Co. Ltd.
Ms. Tomoko Okumoto Tauchi, Deep Ocean Resources Development Co. Ltd.
Dr. Naohisa Kanda, JAPAN NUS Co., Ltd.

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Mr. Malefetsan Moseme (Head of delegation)

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Sr. Antonio Cruz Díaz, Jefe de Cancillería y Representante Alterno ante la Autoridad Internacional de los Fondos Marinos
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Mr. Mustapha D. Mohammed, Deputy Director, Adviser, Geological Sensing

Dr. Oni Omotayo Francis, Deputy Director, Adviser, Federal Ministry of Justice

Mr. E. K. Chikwendu, Deputy Manager, Department of Petroleum Resources

Mr. A. A. Balogun, Assistant Director, National Boundary Commission

Mr. Nurudeen M. Abba, Assistant Director, National Boundary Commission

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Ms. Ingrid Mollestad, Ambassador of the Kingdom of Norway to the Republic of Cuba

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Mr. Tomasz Abramowski, General Director, Interoceanmetal Joint Organization
Ms. Irena Cousins, Honorary Consul in Kingston, Jamaica

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Mr. Kim Sun Hwa, Researcher, Korea Institute of Ocean Science and Technology
Ms. Suh Yeon Jee, Post Doctoral Scientist, Korea Institute of Ocean Science and Technology

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Mr. Konstantin Grigorievich Muraviov
Mr. Aleksey Vladimirovich Orel, Department Director, Ministry of Natural Resources
Mrs. Irina Nikolaievna Ponomareva, Deputy Chief Geologist of World Ocean Mining of the State Scientific Center
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Mr. Aleksey Alekeevich Sazonov
Mr. Aleksandr Andreevich Sobolev
Mr. Egor Sergeevich Fedorov

Mr. Georgiy Alexandrovich Cherkashov, Deputy General Director of the Federal State Unitary Enterprise “VNIIIOceanogeology”.

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Mr. Luke Tang, Counsellor, Legal, Permanent Mission to the United Nations in New York
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Council

Distr.: General
11 November 2016

Original: English

Twenty-third session

Kingston, 31 July-4 August 2017

Election of members of the Legal and Technical Commission

Report of the Secretary-General

1. In decision [ISBA/22/C/29](#) relating to the election of the members of the Legal and Technical Commission for the period from 2017 to 2021, the Council of the International Seabed Authority requested that the Secretary-General provide a report in which he would identify the ideal size of the Commission and propose a mechanism to ensure that future elections would be undertaken in a manner that better took into account all the considerations set out in the second preambular paragraph of the decision,¹ including equitable geographical representation. The present report responds to that request.

2. In accordance with article 163 of the United Nations Convention on the Law of the Sea, the members of the Commission are elected by the Council from among the candidates nominated by the States parties for a term of five years. States parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the Commission. Due account shall be taken of the need for equitable geographical distribution and the representation of special interests. In accordance with article 165, paragraph 1, of the Convention members of the Commission shall have appropriate qualifications, such as those relevant to exploration for, and exploitation and processing of, mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise.

Size of the Commission

3. Under article 163, paragraph 2, of the Convention, the Commission is to be composed of 15 members. Nevertheless, if necessary, the Council may decide to

¹ The second preambular paragraph of [ISBA/22/C/29](#) reflects the language of article 163, paragraphs 3 and 4, of the Convention, and reads as follows:

Recalling article 163, paragraphs 3 and 4, of the United Nations Convention on the Law of the Sea, which provides that candidates nominated for the Commission shall have appropriate qualifications in the area of competence of the Commission and that in the election of members of the Commission, due account shall be taken of the need for equitable geographical distribution and the representation of special interests.

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increase the size of the Commission, having due regard to economy and efficiency. The Council has made use of that provision by increasing the size of the Commission in all previous elections. It may be noted that each of the other two expert bodies of the Authority provided for in the Convention, the Finance Committee and the Economic Planning Commission, shall also have 15 members.²

4. The first election of the Legal and Technical Commission was held in August 1996. The Council took advantage of the flexibility provided in article 163, paragraph 2, of the Convention and decided, after protracted and difficult negotiations over the balance of regional representation on the Council, to increase the number of seats on the Commission to 22, without prejudice to future elections,³ on the basis that 22 nominations had been submitted for the 15 seats available. The same procedure was repeated for the elections in 2001 and 2006. The Council decided to approve all the candidacies submitted, increasing the number of seats on the Commission from 15 to 24 in 2001 and to 25 in 2006. On each occasion, the decision was said to be taken without prejudice to future elections and claims of the regional groups and interest groups. Although the Council did not record its reasons for deciding to increase the size of the Commission on each occasion, it was apparent that the decision had been motivated less by the actual or perceived workload of the Commission than by the desire to avoid a vote and to accommodate late nominations. On no occasion did the Council attempt an assessment of the actual needs of the Commission in terms of the number of members.

5. In 2011, in electing the members of the Commission for the period from 2012 to 2016, the Council recalled its decision relating to the procedures for election and expressed regret that some nominations had been received after the closing date. Nevertheless, the Council noted that, owing to the flexibility shown by members of the Council and regional groups, the total number of candidates for election did not exceed 25, as had been agreed by the Council in its previous decisions. The Council therefore decided, without prejudice to future elections, and having due regard to economy and efficiency, to increase the number of members of the Commission to 25. However, owing to the resignation in 2014 of one member, with no subsequent nomination of a replacement candidate, the membership of the Commission continued at 24.

6. In 2016, the Council again decided, on an exceptional and temporary basis, without prejudice to future elections, and with due regard to economy and efficiency, to increase the number of members of the Commission to 30, which corresponds to the number of nominations received by the closing date for nominations.

² In a report issued in 2007 (ISBA/13/C/2), it was noted that the intent of the provision in article 163 (2) that the Council might decide to increase the size of the Commission had been designed to ensure that any deficiencies in the expertise available to the Commission could be made up by including additional disciplines that had not been represented by the original 15 members elected to the Commission. It had not been meant to provide increases for political convenience. If the latter had been the case, the Convention would have established a higher number for the membership, such as 21, as had been done for the Tribunal and the Commission for the Continental Shelf.

³ Subsequently, an additional member from the Group of Latin American and Caribbean States was elected, bringing the actual membership to 23.

Composition of the Commission

7. Article 165, paragraph 1, of the Convention entrusts the Council with the obligation to ensure that the membership of the Commission reflects all appropriate qualifications, such as those relevant to exploration for, and exploitation and processing of, mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise. There are no specific requirements in the Convention in relation to regional representation on the Commission. Instead, the Convention simply provides that due account shall be taken of the need for equitable geographical distribution and the representation of special interests.

8. In previous elections, the Council has taken some steps to ensure that the membership of the Commission reflects an appropriate balance of such qualifications and expertise. For example, at the second election, in 2001, the Council requested the Secretariat to provide it with an indication of the likely programme of work for the Commission, so that members of the Council might make informed judgments of the type of qualifications needed for members of the Commission.

9. At the twelfth session, in 2006, the outgoing members of the Commission were asked to share with the Council their experience on the expertise required by the Commission for its effective functioning. In response, the Commission stated that there was a need to preserve as wide a range of disciplinary expertise as possible. It specifically noted the need for specialists in certain key disciplines, including marine biology, mining engineering and mining economics. The Commission further acknowledged that it was unlikely to be able to provide every type of expertise needed to fulfil its wide remit of work. For that reason, the Commission recalled that, when necessary, expertise had been sought outside its members by the Secretariat to bring additional specialized knowledge and skills to its work.

10. In 2015, at the twenty-first session, the Commission reported to the Council that it had held a general discussion and exchange of views on its size and composition, in anticipation of the election of members for the period from 2017 to 2021 ([ISBA/21/C/16](#), para. 47). The Commission reported that it had generally been agreed that the current size of the Commission had allowed for a broad participation by members and that the general level of attendance had been satisfactory. It was noted that the future programme of work of the Commission would probably require more specific expertise relating to the economics of mining projects and marine technology to complement that of the Commission members. The Council took due note of the views expressed by the Commission, but did not make, at that time, any decision relating to the maximum size of the Commission.

11. The Secretariat has attempted to analyse the balance of expertise on the Commission by comparing the list of appropriate qualifications set out in article 165, paragraph 1, with the information provided by the members elected for the periods from 2012 to 2016 and from 2017 to 2021. The areas of expertise of the current members of the Commission are summarized in table 1.

Table 1
Areas of expertise of the members of the Legal and Technical Commission

<i>Area of expertise</i>	<i>2012 to 2016</i>	<i>2017 to 2021</i>
Mineral resources (geology, geophysics, engineering)	10	14
Oceanology	5	1
Marine environment	2	4
Economy	1	1
Legal matters ^a	6	10

^a “Legal matters” is a relatively broad category that covers many different aspects. On closer examination, it is apparent that most legally qualified members of the Commission have expertise in the law of the sea, diplomacy or international environmental law. Very few have expertise in mining law or commercial law.

12. The question of the balance of expertise on the Commission was considered in the context of the interim report presented by the consultants appointed for the purposes of the periodic review of the International Seabed Authority pursuant to article 154 of the Convention.⁴ In their report, the consultants noted that a majority of the interviewed stakeholders considered the members of the Commission to be well qualified. However, respondents from all groups expressed concerns about the balance of expertise on the Commission. The result shows a potential lack of sufficient expertise in some areas, such as economics or subsea technical operations.

13. Article 163, paragraph 4, of the Convention provides that in the election of members of the Commission, due account shall be taken of the need for equitable geographic representation and the representation of special interests. “Special interests” in this sense refers to the interests reflected in the composition of the groups of States in the Council as set out in paragraphs 15 and 16 of section 3 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.⁵ There is no agreed quota for regional representation and, in this regard, the Commission is in the same position as the committees of independent experts elected by members of the United Nations under the core international human rights treaties.^{6,7}

⁴ [ISBA/22/A/CRP.3](#) (1).

⁵ Further information regarding the composition of these groups may be found in the informal indicative lists of countries fulfilling the criteria for membership in the groups of States listed in paragraph 15(a) to (c) of section 3 of the annex to the Agreement compiled every two years by the Secretariat. The most recent such documents are [ISBA/22/A/CRP.1](#) and [ISBA/22/A/CRP.2](#).

⁶ International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance.

⁷ In all cases, due consideration is to be given to equitable geographical representation. Some of the later human rights treaties also require States to ensure balanced gender representation but, again, no quotas have been agreed.

14. Table 2 shows the historical distribution of seats on the Commission by regional groups.

Table 2
Membership of the Legal and Technical Commission by regional group

<i>Term of office of the Commission</i>	<i>Africa</i>	<i>Asia-Pacific</i>	<i>Eastern Europe</i>	<i>Latin America and the Caribbean</i>	<i>Western Europe and Others</i>	<i>Total membership</i>
1997-2001	5	5	3	4	6	23
2002-2006	6	8	1	4	5	24
2007-2011	6	7	2	5	5	25
2012-2016	3	6	3	5	8	25
2017-2021	5	9	2	5	9	30

15. Table 3 shows the distribution of seats on the Commission by group of States represented on the Council.

Table 3
Membership of the Legal and Technical Commission by group of States⁸

<i>Election year</i>	<i>Group^a</i>					<i>Non-members of the Council</i>	<i>Total membership</i>
	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>		
1997	3	4	0	1	7	7	22
2002	4	3	2	3	7	5	24
2007	4	4	1	4	9	3	25
2012	4	4	0	4	9	4	25
2016	3	4	2	4	11	6	30

^a Groups A to E correspond to the States covered in paragraph 15(a) to (e), respectively, of section 3 of the annex to the Agreement.

Participation in the work of the Commission

16. No official records of attendance of members of the Commission were kept before the seventh session of the Authority. After the adoption by the Council of the rules of procedure of the Commission in 2000, the Secretariat began to maintain a definitive record of attendance. The record shows that, during the period from 2002 to 2006, attendance at meetings of the Commission averaged 76 per cent. Attendance during the period from 2007 to 2011 averaged 71.8 per cent, while attendance during the period from 2011 to 2016 averaged 83 per cent. While those statistics are encouraging, it may be noted that they conceal the fact that a small

⁸ Analysis is based on actual membership of the Council by the State nominating each member of the Commission as at the date of election. Actual membership may have changed during the term of office of the Commission due to rotation of seats on the Council. States listed under the column “non-members of the Council” would have been eligible for election to one or more of the special interest groups in the Council, but are listed here as non-members.

number of elected members have not attended any meetings at all, and that some have attended only one or two meetings. It may also be noted that, since 2013, owing to its increased workload, the Commission has been meeting twice a year. This has presented a considerable challenge to some members of the Commission, who are not always able to attend both meetings in a year, either for financial reasons, or because they have other work commitments.

17. Members of the Commission from developing countries may be eligible for financial assistance from the Voluntary Trust Fund.⁹ The actual expenditure from the Voluntary Trust Fund attributable to members of the Commission in 2015 amounted to \$64,743. Out of the 30 members of the new Commission, 11 members from developing countries may be eligible for assistance from the voluntary trust fund. The annual cost of such assistance, based on full participation in two meetings per year, is estimated at \$169,723. This represents an increase of \$104,980 over the actual expenditure from the fund in 2015.

Procedure for the nomination of candidates

18. One difficulty experienced in previous elections was that nominations were sometimes submitted very late, making it difficult for members of the Council to fully evaluate them. For the second election of the Commission, in 2001, the Council decided to adopt an approach similar to that followed for the election of judges of the International Tribunal for the Law of the Sea.¹⁰ It decided that, for future elections to the Commission, in order to allow members of the Council adequate time to review the candidacies, the nominations and the curricula vitae of candidates should be submitted to the Secretary-General of the Authority not later than two months prior to the opening of the session at which the election was to take place (ISBA/7/C/7, para. 6). A similar process was followed for the election in 2006. Unfortunately, in 2006, the Council's request notwithstanding, some nominations were received less than two months before the election. It was noted that, in the absence of a decision by the Council on a closing date for submissions and on the consequences of failing to submit a nomination in time, the Secretary-General had no discretion to reject the late nominations.

19. At the thirteenth session of the Authority, in 2007, the Council decided that the procedure for the nomination of candidates to the Commission would be as follows (ISBA/13/C/6):

(a) At least six months before the opening of the session of the Authority at which the election is to be held, the Secretary-General shall address a written invitation to all members of the Authority to submit their nominations of candidates for election to the Commission;

(b) Nominations for election to the Commission shall be accompanied by a statement of qualification or curriculum vitae setting out the candidate's qualifications and expertise in fields relevant to the work of the Commission and

⁹ The rules governing the management and operation of the voluntary trust fund were last updated in 2003 and, at its meetings during the twenty-second session, the Finance Committee noted that there might be a need to review and update the rules. The Secretariat was tasked with providing a report to the Committee on this matter in 2017.

¹⁰ Statute of the International Tribunal for the Law of the Sea, art. 4, para. 2.

shall be received not less than three months prior to the opening of the relevant session of the Authority; nominations received less than three months prior to the opening of the relevant session of the Authority will not be accepted;

(c) The Secretary-General shall prepare a list, in alphabetical order, of the persons nominated for election to the Commission in accordance with paragraph (a) above, indicating the nominating member of the Authority and containing an annex with the statements of qualification or curricula vitae submitted in accordance with paragraph (b) above; the list shall be circulated to all members of the Authority not less than two months prior to the opening of the session at which the election is to be held.

20. This procedure was followed for the elections held in 2011 and in 2016. For the latter, at the request of the Council, the letter from the Secretary-General to member States inviting the nomination of candidates also referred to the relevant criteria for candidate selection, including the fact that candidates must be independent, have no conflict of interest, possess technical expertise and be fully committed to participating in all meetings of the Commission.

Process for elections

21. The procedure for elections to the Commission is set out in rules 56 and 77 of the rules of procedure of the Council. As a general rule, decisions shall be made by consensus. If all efforts to reach a consensus have been exhausted, decisions by voting shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers of the Council referred to in rule 56, paragraph 5.¹¹ Those candidates, not exceeding the number of member places available, obtaining in the first ballot the required two-thirds majority of those present and voting will be declared to be elected. If the number of candidates obtaining such majority is less than the number of members to be elected, there shall be additional ballots to fill the remaining places. The voting will be restricted to the candidates obtaining the greatest number of votes in the previous ballots to a number no greater than twice the places remaining to be filled.

Conclusion

22. As far as the process for nomination of candidates for election to the Commission is concerned, it is recommended that the current practice of setting a clear timetable for nominations be continued for future elections. For the elections in 2016, all candidacies, except for one, were received in advance of the closing date stipulated. The Council followed the procedure it had adopted in 2007 and the late candidacy was not accepted.

23. In terms of the size of the Commission, there is evidence from the reports issued by the Commission itself that the Commission has functioned effectively with a membership of 24. There is no evidence as yet as to how a Commission composed of 30 members will function, and it is therefore not possible to make any

¹¹ For the purposes of voting, each group of States elected under paragraphs (a) to (c) of rule 84 of the rules of procedure of the Assembly shall be treated as a chamber. The developing States elected under paragraphs (d) and (e) of rule 84 shall be treated as a single chamber.

recommendation in this respect. Nevertheless, it may be noted that the financial implications of a larger Commission in relation to the Voluntary Trust Fund can be estimated at approximately \$100,000 per year. The possibility of assistance from the Voluntary Trust Fund is critical to ensuring effective participation in the work of the Commission, as demonstrated by an increase in the average attendance rate between 2007 and 2016 from 71 to 83 per cent.

24. There are imbalances in the composition of the Commission, both in terms of equitable geographical representation and balance of expertise. Despite efforts by the Commission and the Council to broaden the range of expertise, these imbalances have increased. While member States should be encouraged to nominate candidates from a broader range of disciplines, there is no immediately obvious basis for allocating seats on the Commission in a way that satisfies all required criteria. One possible way to improve the balance of expertise would be to provide details on the required areas of expertise or specialities in the letter from the Secretary-General to member States inviting the nomination of candidates.

25. One way to improve the process for future elections would be for the Council to make another decision as to the size of the Commission to be elected the year preceding the election. In the event that more nominations are received than places are available, the Council, adhering to its decision on the nomination of candidates (ISBA/13/C/6), would then proceed to elect the agreed number of members by voting in accordance with rules 56 and 77 of the rules of procedure of the Council. This is in fact the general practice in most of the independent expert bodies elected by the States Members of the United Nations.



Council

Distr.: Limited
14 June 2019

Original: English

Twenty-fifth session

Council session, part II

Kingston, 15–19 June 2019

Agenda item 15

Issues relating to the election of members of the Legal and Technical Commission

**Algeria, on behalf of the African Group, and Brazil, on behalf of the
Latin American and Caribbean States Group: draft decision***

Draft decision of the Council of the International Seabed Authority relating to the election of members of the Legal and Technical Commission

The Council of the International Seabed Authority,

Recalling its decision [ISBA/22/C/29](#) of 22 July 2016, in particular paragraph 2,

Considering the increase in complexity of the matter of the election of members of the Legal and Technical Commission,

Recalling article 163, paragraphs 3 and 4, of the United Nations Convention on the Law of the Sea, which provides that members of the Commission shall have appropriate qualifications in the area of competence of the Commission and that, in the election of members of the Commission, due account shall be taken of the need for equitable geographical distribution and the representation of special interests,

In pursuit of establishing more certainty in the process of future elections of members of the Commission,

1. *Takes note* of the report of the Secretary-General on the election of members of the Legal and Technical Commission;¹
2. *Decides* that equitable geographical representation, as well as special interests and appropriate fields of expertise, shall guide the process of election of members of the Commission;
3. *Also decides* that any future change in the size of the Commission should be determined no later than one year before the election, taking into account paragraph 2 above;

* Originally submitted in 2017.

¹ [ISBA/23/C/2](#).



4. *Further decides* that the number of vacancies allotted to each regional group at the next election shall be determined in the light of equitable geographical representation;
 5. *Calls upon* regional groups to take into account the considerations set out in the third preambular paragraph of the present decision.
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Council

Distr.: General
17 February 2020

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Agenda of the Council

1. Opening of the session.
2. Adoption of the agenda.
3. Election of the President.
4. Election of the Vice-Presidents.
5. Report of the Secretary-General on the credentials of members of the Council.
6. Issues relating to the election in 2021 of members of the Legal and Technical Commission.
7. Election to fill a vacancy on the Legal and Technical Commission in accordance with article 163, paragraph 7, of the United Nations Convention on the Law of the Sea, if any.
8. Status of contracts for exploration and related matters, including information on the periodic review of the implementation of approved plans of work for exploration.
9. Report of the Secretary-General on the status of national legislation relating to deep seabed mining and related matters.¹
10. Consideration, with a view to approval, of applications for a plan of work for exploration, if any.
11. Report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission.
12. Draft regulations for exploitation of mineral resources in the Area.
13. Report of the Chair of the Legal and Technical Commission on the work of the Commission at its twenty-sixth session.¹
14. Report of the Finance Committee.¹
15. Budget of the International Seabed Authority.¹

¹ To be considered in part II of the session, in July.



16. Scale of assessment for contributions to the budget of the International Seabed Authority.¹
 17. Report on matters relating to the Enterprise.¹
 18. Cooperation with other relevant international organizations.¹
 19. Dates of the next session.¹
 20. Other matters.
-



Council

Distr.: Limited
4 December 2019

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Provisional agenda of the Council

1. Opening of the session.
2. Adoption of the agenda.
3. Election of the President.
4. Election of the Vice-Presidents.
5. Report of the Secretary-General on the credentials of members of the Council.
6. Issues relating to the election in 2021 of members of the Legal and Technical Commission.
7. Election to fill a vacancy on the Legal and Technical Commission in accordance with article 163, paragraph 7, of the United Nations Convention on the Law of the Sea, if any.
8. Status of contracts for exploration and related matters, including information on the periodic review of the implementation of approved plans of work for exploration.
9. Report of the Secretary-General on the status of national legislation relating to deep seabed mining and related matters.¹
10. Consideration, with a view to approval, of applications for a plan of work for exploration, if any.
11. Report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission.
12. Draft regulations for exploitation of mineral resources in the Area.
13. Report of the Chair of the Legal and Technical Commission on the work of the Commission at its twenty-sixth session.¹
14. Report of the Finance Committee.¹

¹ To be considered in part II of the session, in July.



15. Budget of the International Seabed Authority.¹
 16. Scale of assessment for contributions to the budget of the International Seabed Authority.¹
 17. Report on matters relating to the Enterprise.¹
 18. Cooperation with other relevant international organizations.¹
 19. Dates of the next session.¹
 20. Other matters.
-



Council

Distr.: General
4 December 2019

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Item 12 of the provisional agenda*

Draft regulations for exploitation of mineral resources in the Area

Comments on the draft regulations on the exploitation of mineral resources in the Area

Note by the secretariat

I. Introduction

1. During the second part of the twenty-fifth session, in July 2019, the Council of the International Seabed Authority considered a revised version of the draft regulations on exploitation of mineral resources in the Area prepared by the Legal and Technical Commission ([ISBA/25/C/WP.1](#)), together with a note from the Commission providing an overview of the key matters relating to the fine-tuning of the regulatory text and highlighting specific areas that require further work ([ISBA/25/C/18](#)). The Council noted with satisfaction the interactive discussion during its meetings on the draft regulations and welcomed the proposals and observations presented by member States and observers. It decided that additional written comments on the draft regulations, including specific drafting suggestions, could be sent to the secretariat no later than 15 October 2019 and requested the secretariat to prepare a compilation of the proposals and observations sent by members of the Council and a compilation of proposals and observations sent by other States members of the Authority, observers and other stakeholders, to be submitted by the President of the Council and published no later than 30 December 2019, for consideration by the Council at its twenty-sixth session ([ISBA/25/C/37](#)).

2. At the time of reporting, the secretariat had received 39 submissions of comments on the draft regulations. The breakdown of the submissions is as follows: members of the Council (19); other States members of the Authority (8); observer States (1); intergovernmental organizations (2); non-governmental organizations (6); International Seabed Authority contractors (2); and other stakeholders (1). The submissions have been compiled and made available on the website of the Authority

* [ISBA/26/C/L.1](#).



in accordance with the Council's decision.¹ In addition, a conference room paper reflecting the textual proposals made by members of the Council has been prepared and is also available on the website of the Authority.

3. The present note supplements the discussions held in the Council in July 2019 by providing a broad overview of the main issues raised in the written submissions. An overview of general points arising from specific regulatory provisions is provided in the annex to the present note. Apart from observations in relation to an environmental compensation fund, the note does not include points raised in connection with the development of the economic model and the financial terms of contracts, which are currently being considered by an open-ended informal working group of the Council (ISBA/24/C/8/Add.1, para. 12 and annex II).

4. Many of the written submissions contain drafting and stylistic suggestions, as well as indications of issues that may benefit from further reflection and common understanding, and requests for clarification related to the content and purpose of a number of regulatory provisions. Detailed comments were also made on the content of some of the annexes to the draft regulations. The need to review the translations of certain terms and provisions was also noted.

II. Issues arising from the submissions

A. General observations

5. The continuous improvement in the content and drafting of the regulatory text was generally welcomed, while it was noted that further work was required on certain aspects, including with a view to ensuring consistency with the provisions of the United Nations Convention on the Law of the Sea and the Agreement relating to the Implementation of Part XI of the Convention. In that regard, the need to avoid paraphrasing the Convention, and to instead refer to its relevant articles where needed, was stressed.

6. The importance of advancing work on the draft regulations in parallel to and in a manner complementary to the necessary standards and guidelines continued to be highlighted, and the need to develop such standards and guidelines before the adoption of the exploitation regulations or prior to the approval of the first plan of work was emphasized in some submissions. Views were expressed on the required timing of the development of certain standards and guidelines, and specific standards and guidelines were suggested that would be necessary besides those indicated in the current draft regulations. The need for transparency and inclusiveness in the development of standards and guidelines was emphasized. It is noted that the Commission proposed, and the Council took note of, a process and schedule for the development of the necessary guidelines in 2020 (ISBA/25/C/19/Add.1, enclosure I), and the Commission is expected to advance consideration of a number of guidelines at its next session, in particular those that, as it suggested, need to be in place by July 2020 and those to be initiated immediately but completed after July 2020.

7. In some submissions, the importance of adhering to the schedule approved by the Council and completing the regulatory framework for exploitation in 2020 was stressed. On the other hand, the view was expressed that respecting a self-imposed deadline should not come at the expense of the quality of the regulatory framework. In some submissions, attention was drawn to the work of the ongoing intergovernmental conference on an international legally binding instrument under

¹ See www.isa.org.jm/legal-instruments/ongoing-developmentregulations-exploitation-mineral-resources-area.

the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

8. The submissions continued to highlight the importance of operationalizing the common heritage of mankind in the regulations. Several submissions called for striking the right balance between a number of aspects and interests, including between exploitation and economic development on the one hand and environmental protection on the other, between the equitable sharing of benefits and sound commercial principles, and between the different categories of States (i.e. sponsoring States, flag States, coastal States and port States) and stakeholders. In particular, the rights and legitimate interests of coastal States were emphasized, with suggestions made for mechanisms of consultation, prior notification and exchange of information, and the inclusion of relevant coastal States in the preparation of emergency response and contingency plans. The need to protect the economies of States from the effects of activities in the Area was also raised. With regard to the latter issue, it is noted that the secretariat will be undertaking a study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals.

9. While it was generally recognized in the submissions that the effective implementation of the regulations would require some level of delegation of tasks, the continued need to clarify, throughout the regulatory text, the role of the various organs of the Authority and to respect their mandates was also highlighted. The submissions again contained a range of views with regard to the consistency with the Convention and the appropriateness of certain powers assigned to the Secretary-General and, in some cases, to the Commission under the draft regulations. On the other hand, some submissions indicated that additional approval mechanisms should be delegated to the Secretary-General, given the time interval between meetings of the various organs of the Authority. In addition, suggestions were made for tasks to be assigned to the Finance Committee, noting that its role was currently limited to matters concerning the environmental compensation fund. It is noted that, during the twenty-fifth session, the Commission concurred that the development of an operational policy document by the Council, including guidance on delegated decision-making and a clearer understanding of the roles and responsibilities of sponsoring States and flag States (see para. 10 below), would provide further clarity in the regulatory text and implementation ([ISBA/25/C/18](#), para. 7).

10. The need to further clarify the roles and responsibilities of the various regulators (e.g. the Authority, sponsoring States and flag States) continued to be emphasized. It was suggested to specifically state in the regulations that no new obligations would be created for States parties that were not acting as sponsoring States. It is noted that the study on the interface of competencies between the Authority and the International Maritime Organization is available on the Authority's website.² In this connection, the Commission will continue to consider whether the approach taken in draft regulation 30 is sufficient at this stage and to make recommendations to the Council in relation to the content of annex VI to the draft regulations concerning a health and safety plan and a maritime security plan.

11. The timelines set out in the draft regulations continued to be a focus of comments, with different views expressed on the duration and extension periods of contracts, as well as comments made that some timelines were missing in certain regulations, while existing timelines might be too long or, given the potential complexity of documentation review processes, certain prescribed periods might be too short, including in the light of the meeting schedules of decision-making organs. A suggestion was made to include a provision allowing the Secretary-General to grant

² Available at www.isa.org.jm/document/competencies-isa-and-imo.

the extension of a time frame, subject to certain conditions. It is noted that the issue of timelines is still under review by the Commission and the Council (ISBA/25/C/18, para. 6).

12. The need to provide opportunities for public consultations at the various stages of the approval and renewal processes for the plan of work continued to be stressed.

13. The importance of protecting contractors' rights and ensuring the stability of exploitation contracts and of the regulations was emphasized, with concerns expressed that the current text of the regulations allowed the Authority to change the regulations and that certain provisions defeated the principle that the contract may be revised only with the consent of the contractor and the Authority.

14. Requests were made to further review the fees imposed under the regulations, with concerns expressed regarding costs to the contractors and the overlap of payments of exploration and exploitation fees.

15. While suggestions were made to specifically indicate that the regulations apply to polymetallic nodules, polymetallic sulphides and ferromanganese crusts, in other submissions it was suggested that the regulations should better take into account the differences in the exploitation of those minerals.

16. The importance of capacity-building for developing countries was emphasized, with a suggestion that the regulations be accompanied by a clear and measurable work plan to strengthen capacity and transfer technology.

B. Key thematic issues requiring further attention

17. In addition to the general observations above and to matters concerning financial aspects (see para. 3 above), the key thematic areas set out below emerged from the submissions as requiring further attention.

1. Protection and preservation of the marine environment

18. It was generally recognized in the submissions that further work was required concerning the provisions of the regulations related to the protection of the marine environment to ensure the highest possible environmental standards. This included further consideration of how to better operationalize such principles and approaches as the polluter pays principle, the precautionary approach/principle and an ecosystem approach; the review of contractors' compliance with environmental obligations; providing for the possibility of relying on independent expertise at the various stages of the process, including in monitoring and environmental assessments; and matters related to the role and status of regional environmental management plans.

19. In particular, with regard to regional environmental management plans, while it was emphasized in some submissions that the provisions of such plans should be binding and that fully developed and agreed plans should be made a condition for the approval of plans of work, in other submissions it was noted that the plans were non-legally binding policy instruments, and it was stressed that the modalities of the plans should be clarified and agreed before considering whether and how to include specific language on regional environmental management plans in the regulations.

20. In addition to those issues, the priority of developing standards or guidelines related to the marine environment, including for environmental impact assessments, the preparation of environmental impact statements, environmental management and monitoring plans and closure plans, was emphasized in the submissions. Suggestions were made that all matters related to environmental protection should be set out in standards. It was noted, however, that the relationship between environmental

standards, environmental management systems, environmental impact statements and environmental management and monitoring plans (draft regulations 45 to 48) required further clarification, including with regard to content, output, workflow and the primary implementing entity. It is noted that the Commission has established a technical working group tasked with undertaking the necessary work on environmental impact assessments, environmental impact statements and environmental management and monitoring plans for consideration at its meetings during the twenty-sixth session of the Authority, in accordance with the schedule for the development of guidelines under phase 1 (ISBA/25/C/19/Add.1, enclosure I).

21. Suggestions were made to develop a manual for the monitoring and assessment of activities before, during and after the exploitation phase, including detailed methodologies for the establishment of environmental baselines. It is noted that the Commission has tasked a technical working group with undertaking the necessary work on the expected scope and standard of baseline data.

22. Concerns were expressed regarding the lack of consideration of climate change in the draft regulations, and suggestions were made to address that issue. A requirement to assess cumulative effects was also suggested.

2. Inspection, compliance and enforcement

23. In the submissions, the critical importance of ensuring that the Authority can review contractors' compliance with their obligations and apply appropriate penalties was generally emphasized. In that context, the need to give careful consideration to a number of aspects was highlighted, including the rights, obligations and responsibilities of all actors concerned in inspection activities; how the costs of an inspection mechanism would be borne by the Authority, contractors and/or sponsoring States; matters related to the establishment, composition, functions and conduct of a team of inspectors; the scope of inspection activities; and the criteria for triggering an inspection. A suggestion was made to develop rules and procedures for an inspection mechanism. It was also suggested that an inspection mechanism should be established before the onset of any exploitation activity. Attention was drawn to the merits of considering the experience of similar schemes in the context of the oil and gas industries and regional fisheries management organizations. The need for the inspection regime to be consistent with the exclusive jurisdiction of the flag State over its vessels on the high seas was noted. A proposal was made to establish a compliance committee.

3. Responsibility and liability

24. In several submissions, attention was drawn to the need to address issues concerning the responsibility and liability of various actors for ensuring that exploitation is undertaken in a safe and environmentally responsible manner. In particular, the issues raised included the liability of the various actors involved in cases of environmental harm; the exclusion of liability of a contractor for force majeure, and concerns about the potential impact of such clauses on the Authority and States; and matters related to the environmental compensation fund, including the purpose, modalities and legal status of such a fund, with concerns expressed regarding the use of such a fund for research and training purposes.

4. Recourse to independent expertise

25. The importance for the organs of the Authority, at their discretion, to invite independent experts to provide advice on specific matters, bearing in mind the need for consistency with the provisions of the Convention, was noted in some submissions. The need to further consider the mechanism for the provision of such

expertise, the types of expertise required and the role and selection of experts was noted. The Commission has also previously commented on some of these issues (ISBA/25/C/18, paras. 14 and 15; see also [ISBA/25/C/10](#)).

5. Other issues

26. Matters related to the Enterprise were raised, including the development of clear conditions, standards and procedures concerning joint ventures that would address, inter alia, their nature and legal status, the laws applicable to joint ventures and equity participation in joint ventures. It was emphasized that the Enterprise should be fully operational before the adoption of the exploitation regulations.

27. Among the other issues raised, the need to further clarify the provision on reasonable regard for other activities in the marine environment was noted in a number of submissions. Some submissions also included a suggestion of further consideration of the provisions of the regulations on the termination of sponsorship, the transfer of rights and obligations and change of control.

28. The issue of test mining was also raised, with suggestions that licensed and successful test mining be required for the approval of a plan of work and that the conditions, requirements and procedures under which test mining is to be conducted should be set out in a separate set of regulations.

29. In some submissions, the importance of adaptive management and of incorporating adaptive management principles in the draft regulations was emphasized. Suggestions were made to develop criteria and procedures for adaptive management to modify approved plans of work should new information arise concerning damage, areas of particular environmental importance or new technologies.

30. The provisions on the confidentiality of information drew a number of comments, with suggestions to further clarify what data and information are confidential by setting criteria or specifying which minimum data and information must be shared, including in relation to information to be published in the Seabed Mining Register.

III. Way forward

31. In anticipation of the twenty-sixth session of the Authority, the President of the Council during its twenty-fifth session, in a letter dated 22 November 2019, transmitted to the representatives of the members of the Council a briefing note regarding a way forward to develop the regulations on the exploitation of mineral resources in the Area at the twenty-sixth session of the Council, in which she proposed the establishment of one or two additional informal open-ended working groups of the Council with a mandate to facilitate the negotiation of the more complex issues related to the protection and preservation of the marine environment, mostly in part IV, as well as the related annexes, appendices and terms in the schedule; and in part XI, on the inspection mechanism, compliance and enforcement, as well as the related annexes, appendices and terms in the schedule.

32. In support of the discussions of the Council and the work to be carried out by the Commission concerning the regulations and the necessary associated standards and guidelines, and in accordance with the schedule for the development of guidelines under phase 1 proposed by the Commission, the background documentation set out below will be made available by the secretariat in the course of the twenty-sixth session.

33. On the basis of a request made by the Council in 2019, the secretariat, with the assistance of experts from the Massachusetts Institute of Technology, is developing a revised economic model, including a progressive ad valorem royalty, for consideration at the next meeting of the open-ended informal working group of the Council, to be convened on 13 and 14 February 2020.

34. The secretariat will also make available to the Council, for information purposes, a background study on the roles and responsibilities of the Authority and sponsoring States.

35. Studies and background notes will also be made available to the Commission in due course, including in response to its requests ([ISBA/25/C/18](#) and [ISBA/25/C/19/Add.1](#)), concerning the following:

(a) A gap analysis of existing and relevant international or national standards and guidelines;

(b) The application of health and safety management systems, including a review of existing international labour and health standards and of the interface of competencies of the Authority and the International Labour Organization;

(c) Insurance requirements under an exploitation contract and placing of insurance risk;

(d) Use of an exploitation contract as security;

(e) The environmental compensation fund, including the rationale, purpose and funding of such a fund, and how to ensure the adequacy of funding;

(f) Remote monitoring technology;

(g) The potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals.

36. The secretariat has also undertaken to advance work to develop the draft text of standards and/or guidelines for the following:

(a) The preparation and assessment of an application for the approval of a plan of work for exploitation (draft regulations 7, 13–16, 25 and annexes I–III);

(b) The development and application of environmental management systems (draft regulation 46 and annex VII);

(c) Tools and techniques for hazard identification and risk assessment;

(d) The safe management and operation of mining support vessels (draft regulations 30 and 32);

(e) The form and calculation of an environmental performance guarantee (draft regulation 26);

(f) The preparation and implementation of emergency response and contingency plans (draft regulations 33 and 53 and annex V).

Annex

Matters arising from specific regulatory text

Part I

1. **Draft regulation 1 (Use of terms and scope).** Suggestions were made that the terms used in the regulations should have the same meaning as those in the United Nations Convention on the Law of the Sea, the Agreement relating to the Implementation of Part XI of the Convention and the rules, regulations and procedures of the International Seabed Authority, with concerns expressed that the generic reference to the “Rules of the Authority” was not accurate, including in the light of the definition of that term in the schedule.

2. **Draft regulation 2 (Fundamental policies and principles).** Concerns were expressed regarding the fact that this draft regulation does not include a distinction between those elements which are policies and those which are principles and that it also includes elements that may be considered to be approaches. Inconsistencies with article 150 of the Convention were also stressed. The need to define or further clarify some of the policies, principles and approaches listed was also noted. In particular, a number of suggestions were made regarding the formulation of the polluter pays principle (draft regulation 2 (e) (iv)). Suggestions were also made to strengthen the references to certain elements, including effective public participation (e.g. draft regulation 2 (e) (vii)), and to include additional elements.

3. **Draft regulation 3 (Duty to cooperate and exchange of information).** In the submissions, concern was generally expressed about the qualifier “use their best endeavours to” in this draft regulation and throughout the text, and it was noted that this weakened the relevant obligations, including that of cooperation. The need to further clarify the scope of what constitutes data and information that are “reasonably necessary” and the modalities for providing that information were noted, with suggestions that guidelines be developed in that regard.

4. **Draft regulation 4 (Protection measures in respect of coastal States).** The submissions sought to elaborate on the notification and consultation mechanisms and set out more clearly the roles and responsibilities of the various organs of the Authority. Suggestions were made concerning procedures to notify and consult with coastal States regarding potential and actual serious harm; the modalities of the issuance of emergency orders and compliance notices; and matters relating to compensation measures in cases where serious harm cannot be contained or mitigated or the marine environment rehabilitated. Support was expressed for the development of guidelines for the assessment of what constitutes serious harm to the marine environment, and concerns were expressed that serious harm was too high a threshold. It is noted that the Legal and Technical Commission has recommended that guidelines be put in place to address a number of those issues (ISBA/25/C/18, para. 11). In relation to the evidential standard for “clear grounds” to believe that serious harm is likely to occur, suggestions were made that standards rather than guidelines, or both, be developed in that regard.

Part II

5. **Draft regulation 5 (Qualified applicants).** Submissions highlighted the need for the applicant to demonstrate both the technical and economic capacity to undertake exploitation in the Area. Suggestions were made to reinsert a provision to the effect that an application for a plan of work would not be accepted for persons who had previously conducted unauthorized activities. The need to clarify the notion

of effective control in this draft regulation and throughout the text was emphasized, as was the need to clarify the term “competent authority” in relation to the Enterprise.

6. **Draft regulation 7 (Form of applications and information to accompany a plan of work).** Concerns were expressed about the undertaking to comply with national laws, regulations and administrative measures in draft regulation 7 (2) (d) for different reasons. The point was made that the current version of this provision might allow a situation where a contractor – when sponsored by more than one State – would have to comply with national laws, regulations and administrative measures that, albeit consistent with the Convention, might be incompatible with one another. It was also noted that the determination of compliance with such laws, regulations and measures was a matter for the sponsoring State to decide, not for the Authority. Suggestions for additional information to be provided with a plan of work were made. The possibility for the Commission not to approve an application, should the information provided not be considered adequate, was also suggested.

7. **Draft regulation 10 (Preliminary review of application by the Secretary-General).** Where the Secretary-General is from the sponsoring State, it was suggested that consideration should be given to some form of provision to avoid a real or perceived conflict of interest. In the submissions, the need to clarify matters concerning the determination of an applicant’s preference and priority, including the competent organ of the Authority to do so, was noted.

8. **Draft regulation 11 (Publication and review of the environmental plans).** Suggestions were made to clarify the review process and increase openness and transparency in the process, including by requiring that the Commission provide rationales for its recommendations, addressing conflicts of interest and providing for the possibility for the Commission to call on independent experts in carrying out its assessment.

9. **Draft regulation 12 (General).** Clarification was sought on the reference to “independent competent persons”, and it was noted that different terms were used throughout the draft regulations, such as “recognized experts”, “other experts” and “independent scientists”. In particular, questions arose as to how they differed from each other, who would be considering and selecting those individuals and where lists of such persons would be made available.

10. **Draft regulation 13 (Assessment of applicants).** Additional criteria for assessing applicants were suggested, including in relation to the protection of the marine environment, consultation with users conducting other activities in the marine environment, in particular the laying of submarine cables, and records of the past performance of applicants. It was suggested that the draft regulation provide for an assessment of compliance with the fundamental principles (draft regulation 2). The importance for the applicant to fulfil the criteria at the time of application, not in the future, was emphasized. Clarifications were sought on the obligations owed by the applicant to the Authority in draft regulation 13 (1) (d) and on the notion of “key environmental parameters” in draft regulation 13 (3) (b). Inconsistencies between the title of the draft regulation and its content were noted in the light of the fact that the draft regulation also includes matters related to the assessment of the application.

11. **Draft regulation 15 (Commission’s recommendation for the approval of a plan of work).** It was emphasized in a number of submissions that a plan of work should not be approved if it did not demonstrate effective protection of the marine environment. In that regard, suggestions were made to provide greater discretion to the Commission in refusing to approve a plan of work or approving it with conditions, including following an assessment against the fundamental principles set out in draft regulation 2.

12. **Draft regulation 16 (Consideration and approval of plans of work).** Issues related to conflicts of interest were raised, with a suggestion to consider whether members of the Council who represent sponsoring States should have to recuse themselves owing to potential conflicts of interest. The need to specify a procedure for disputes concerning a decision of the Council disapproving a plan of work and to include a means of settling disputes was noted, with a suggestion to add a reference to paragraph 12 of section 3 of the annex to the 1994 Agreement, in addition to paragraph 11.

Part III

13. **Draft regulation 18 (Rights and exclusivity under an exploitation contract).** Suggestions were made to clearly state in this regulation that marine scientific research would not be impeded by a contractor's exclusive rights. Clarification was sought on the modalities to ensure that, if a contract relates to the exploitation of one category of resources, the contractor does not extract another category of resources. Clarification was also sought on the reference to the "relevant Guidelines" in paragraph 7.

14. **Draft regulation 19 (Joint arrangements).** Suggestions were made to establish clear conditions for the joint arrangements by stating the specific conditions for such arrangements with the Enterprise.

15. **Draft regulation 20 (Term of exploitation contracts).** This draft regulation drew a number of comments concerning the renewal process and timeline. In particular, a greater level of scrutiny of renewal applications was sought, including through not only the review of the contractor's environmental and regulatory performance, but also any other relevant information. On the other hand, it was argued that a contractor should not have to justify its wish to extend an exploration contract, as long as it met all regulatory requirements. Some submissions indicated a preference for the entire plan of work to be reviewed at the point of renewal and for the inclusion of a provision allowing the Authority to review a contractor's decision on whether a change constitutes a material change. It was suggested that environmental grounds be included among the reasons for the Council to disapprove a renewal. Suggestions were also made to establish a maximum exploitation time for an area by a contractor, such as the period of the initial contract plus two renewals or a maximum overall duration of the exploitation contract of 60 years.

16. **Draft regulation 21 (Termination of sponsorship).** The need to specify when the termination of sponsorship would take effect was emphasized. In that context, concerns were expressed that a reasonable period of time must be allowed to obtain a new sponsoring State given the practical and legal steps required to obtain sponsorship. It was suggested that termination of sponsorship should lead to the termination, or at least the suspension, of a contract. Suggestions were made to reinsert a former provision setting out that the contractor would not be relieved from any obligation or liability and would remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of termination of sponsorship.

17. **Draft regulation 22 (Use of exploitation contract as security).** Concerns were expressed regarding the practicality of some of the requirements set out in this draft regulation, including the requirement that the beneficiary of an encumbrance undertake exploitation activities in the event of foreclosure. It was suggested that the Commission examine whether means in addition to those set out in regulation 22 exist to ensure that the beneficiary is in a position to undertake the exploitation activities in conformity with the contract. While some submissions sought a greater level of

scrutiny by the organs of the Authority in the context of this draft regulation, it was noted, on the other hand, that the granting of the right to exploit should also include the legal right to treat the exploitation contract as a normal financial asset as long as the third party was willing to accept all of the obligations imposed on the contractor; thus, the contractor should be obliged to inform all authorities and States involved of the change but should not require consent. Concerns were also expressed about the timing for gaining approval from the Council. The need to clarify the phrases “any internationally adopted standards for the extractive industries” and “properly regulated through a national financial conduct authority” in paragraph 4 (a) and (b) was noted in order to avoid legal uncertainty. It is noted that the Commission will further consider this issue ([ISBA/25/C/18](#), para. 19).

18. Draft regulation 23 (Transfer of rights and obligations under an exploitation contract). Suggestions were made that the transfer of rights should not require consent but rather a review by the Commission to ensure that the transferee meets all regulatory requirements, or that the Secretary-General should be allowed to authorize the transfer. The need to specify the criteria for not recommending the approval of the transfer under an exploitation contract for polymetallic sulphides and cobalt-rich ferromanganese crusts was noted in the light of the fact that article 6 (3) (c) of annex III to the United Nations Convention on the Law of the Sea addressed only polymetallic nodules. Issues were raised concerning the definition of a “material change” and the threshold for a change to be considered material. Clarification was sought concerning the legal nature and effect of the Seabed Mining Register in the light of the condition that, under the current draft regulation, the transfer would be validly effected only upon its recording in the Register.

19. Draft regulation 24 (Change of control). In the submissions, the need for further work on this draft regulation was noted, including in the light of the fact that a change of control could occur with less than a 50 per cent change in ownership and that a change of control might further lead to a change of the sponsoring State. Suggestions were made to provide for some role for the Council in reviewing a change of control. A concern was expressed with regard to treating a change of control as a transfer of rights and obligations, and a suggestion was made to elaborate further on how the transfer of rights and obligations provisions would be applied to a change of control.

20. Draft regulation 25 (Documents to be submitted prior to production). Clarification was sought on how the Secretary-General could/would assess the comprehensiveness of the feasibility study and determine the actual content of a material change. Suggestions were made to provide for a role for the Commission at the beginning of such an assessment. The need for the annexes to more clearly define the necessary elements of an economic scoping study and feasibility study was noted.

21. Draft regulation 26 (Environmental performance guarantee). Submissions drew attention to the need to address a number of aspects related to the environmental performance guarantee, including its scope, purpose and modalities, as well as the modalities of the repayment or release of the guarantee. Suggestions were made that the Finance Committee study the calculation method and the ceiling of the guarantee and make relevant recommendations to the Council, and that the form and amount of the guarantee be set out in standards rather than guidelines. It is noted that the Commission had previously considered that further discussion with relevant stakeholders was required in order to advance the content of this draft regulation ([ISBA/25/C/18](#), para. 21).

22. Draft regulation 30 (Safety, labour and health standards). It was noted that the level of safety regulation in this draft regulation was insufficient and not commensurate with the risks of the high-hazard offshore industry. Aspects that

required further consideration included the identification of hazards and the assessment of risks, measures to eliminate and control risks, monitoring, audit, review and continuous improvement, and safety management systems. The need to clarify and further discuss the reference to “relevant international shipping conventions” was also stressed. It is noted that the Commission has requested that the secretariat continue to explore these issues and report to the Commission ([ISBA/25/C/18](#), para. 24).

23. **Draft regulation 31 (Reasonable regard for other activities in the marine environment).** Comments focused on the interpretation of the “reasonable regard” obligation, and suggestions were made on how to operationalize it in the draft regulation. The elaboration of guidelines was suggested in that regard. On the other hand, it was also noted that reasonable regard obligations were obligations among States parties to the Convention and that it was not within the power of the Authority to regulate such matters.

24. **Draft regulation 35 (Human remains and objects and sites of an archaeological or historical nature).** The need to consider compensating the contractor should it be decided that exploration and exploitation activities must be discontinued as a result of this regulation was noted. In some submissions, attention was drawn to the fact that the United Nations Educational, Scientific and Cultural Organization might not be the only competent organization in the context of this draft regulation, including in the light of the requirements under the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the 1996 Protocol thereto.

25. **Draft regulation 36 (Insurance).** Clarifications were sought on a number of matters related to insurance, including the types of insured risks, the risks for which the Authority would be insured as an additional assured, the situations covered by the waiver of rights of recourse, and whether the responsibility or liability of the Authority for any damage arising out of wrongful acts in the exercise of its powers and functions would be covered by the insurance of the contractor. The Commission had previously noted that no further action could be taken on this draft regulation until the secretariat completed its review of insurance requirements and availability in the marketplace ([ISBA/25/C/18](#), para. 25).

Part IV

26. **Draft regulation 44 (General obligations).** In addition to the need to clarify a number of phrases and terms, such as “ensuring effective protection for the marine environment”, “harmful effects”, “damage to the marine environment”, “precautionary approach”, “risk assessment”, “risk management” and “response measures”, submissions indicated the need for greater clarity on the respective roles and responsibilities of the Authority, sponsoring States and contractors in this draft regulation, as previously noted by the Commission ([ISBA/25/C/18](#), para. 26). The importance of identifying common understandings of “Best Available Techniques,” “Best Environmental Practices,” “Best Available Scientific Evidence” and “Good Industry Practices” in the relevant guidelines was also noted.

27. **Draft regulation 46 (Environmental management system).** In the submissions, the need to clarify certain aspects related to environmental management systems was pointed out, including defining the term, clarifying the content of such a system and who would develop it, and setting out how it would differ from other related concepts, such as “environmental management and monitoring plan”, “regional environmental management plan” and “environmental impact assessment”. The Commission had previously indicated that the details of such a system, together

with relevant benchmarks and principles, should be set out in guidelines (ISBA/25/C/18, para. 28). Suggestions were made that a standard be issued instead.

28. **Draft regulation 47 (Environmental impact statement).** Bearing in mind that the Commission has recommended the priority development of guidelines and standards for environmental impact assessments and the preparation of environmental impact statements, the submissions addressed the need for the regulations and/or legally binding standards to address certain minimum aspects of an environmental impact assessment, such as the steps of an environmental impact assessment; the roles of the applicant or contractor, the Authority and the sponsoring State in the preparation, assessment and approval process for such assessments; the provision of public consultations on draft assessments as part of the approval process and the public availability of assessments once approved; a requirement to consult with relevant coastal States; a possibility for the Commission to require that certain conditions relating to the mitigation of environmental impacts be included in environmental management and monitoring plans; and specifying the minimum requirements for baseline data. Clarification was sought from the Commission on whether the environmental impact assessment at the exploration phase could not be considered to fulfil the screening and scoping process under paragraph 1 (b) of this regulation, and whether the procedures were compatible with each other.

29. **Draft regulation 48 (Environmental management and monitoring plan).** Suggestions were made concerning the content and review procedure for the plan. Clarifications were sought on the required environmental quality objectives and standards to be met, how to ensure compliance with the plan and the relationship between the environmental management and monitoring plan and regional environmental management plans.

30. **Draft regulation 50 (Restriction on mining discharges).** Further scientific research on the specific discharges resulting from the processing of the various minerals was noted as a precondition to further consider this draft regulation. Suggestions were made to develop guidelines on this issue, including with a view to avoiding asymmetrical obligations between parties to the London Convention and its Protocol and non-parties thereto.

31. **Draft regulation 52 (Performance assessments of the environmental management and monitoring plan).** It was noted that the Authority, through independent experts, should conduct the performance assessments of the environmental management and monitoring plan, not the contractor. A suggestion was made to spell out the instances of reasonable grounds for presuming that the performance assessment of the contractor would be unsatisfactory in paragraph 6 of this draft regulation.

32. **Section 5 (Environmental compensation fund).** There was a general sentiment that the purpose of such a fund should be restricted to that put forward by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea in its advisory opinion of 1 February 2011 in relation to an environmental liability gap that may arise. Clarifications were sought on several aspects of the fund, including who would administer it, who would be able to seek compensation from the fund, the modalities of operation, as well as how the fund would be replenished and the optimum level of funds. Suggestions were made to establish other funds to finance research and training. Connections to the closure plan were also drawn. In response to the Commission's request for the secretariat to reflect on the discussions relating to this topic, with a view to advancing the rationale, purpose and funding of such a fund, and on how to ensure the adequacy of funding (ISBA/25/C/18, para. 31), a study will be made available in due course.

Part V

33. **Draft regulation 57 (Modification of a plan of work by a contractor).** It was suggested that the Secretary-General be supported by independent external experts in the task of determining whether a proposed change to a plan of work constitutes a material change. On other hand, preference was also expressed for the Council to make that determination. A suggestion was made that standards be developed to define and specify what would be considered a material change.

Part VI

34. **Draft regulation 59 (Closure plan).** Suggestions were made to strengthen this draft regulation, including through an obligation to implement management responses or demonstrate the capacity to implement them, by deleting references to cost-effectiveness and by including an obligation to remove all equipment and installations from the Area. Clarifications were sought on the terms “residual and natural environmental effects” and “necessary health and safety requirements”.

35. **Draft regulation 61 (Post-closure monitoring).** The need to determine the procedure to be followed in case the contractor does not comply with the closure plan or in case the actions contemplated in the closure plan do not deliver the desired results was stressed.

Part VIII

36. **Draft regulation 85 (Annual fixed fee).** Clarifications were sought on the annual fixed fee and on the term “commercial production”. The Commission had previously noted that this matter required further discussion ([ISBA/25/C/18](#), para. 33).

Part IX

37. **Draft regulation 89 (Confidentiality of information).** The need to further clarify what constitutes confidential information was noted, as was the need to ensure consistency between the duration of a contract and that of confidentiality, with a suggestion that confidentiality should be kept throughout the duration of a contract unless the contractor indicated otherwise. Other views questioned the retention as confidential of information concerning the environment for over two years or for academic reasons. On the other hand, it was noted that the current drafting of paragraph 4 could limit the possibility of protecting confidential information by indicating that the consent of the contractor for the communication of such information could not be unreasonably withheld. Suggestions were made to establish an administrative procedure in case of objections to the designation of information as confidential.

38. **Draft regulation 90 (Procedures to ensure confidentiality).** The need to further specify a non-disclosure procedure for the members of the Council, in addition to procedures for the Commission and the secretariat, was noted.

Part X

39. This part drew a number of comments focused on specifying more clearly the legal nature of the standards and of the guidelines, with the former being legally

binding and the latter being recommendatory, as well as the organs of the Authority competent to develop and adopt them. Suggestions were made regarding issues to be developed through standards and through guidelines, as well as regarding the priority to be given to their development. Clarifications were sought and suggestions made concerning the procedures for review and stakeholder consultations. As also recommended by the Commission, the need for the expression “consistent with” to be used when referring to standards throughout the regulations, while guidelines could be “taken into account”, was stressed in submissions. It is noted that the Commission had recommended processes for the development of standards and guidelines, including a step to allow for stakeholder consultations and comments. The adoption of standards by the Council and their approval by the Assembly had been considered in the suggested process. In that regard, the Commission had recommended that draft regulation 94 be amended to reflect that standards should be approved by the Assembly ([ISBA/25/C/19/Add.1](#), paras. 20–22).

Part XI

40. The comments made in respect of part XI (Inspection, compliance and enforcement) indicate that further work is required on this part, including with a view to ensuring its consistency with the Convention. Some issues are highlighted in paragraph 23 above. These matters are under review by the Commission ([ISBA/25/C/18](#), para. 36).

Annexes

41. The annexes drew comments of an editorial nature and requests for clarification. Suggestions were made for additional annexes, including the reinsertion of an annex on the environmental scoping report, and new annexes on regional environmental management plans, test mining and an administrative procedure concerning the confidential nature of data and information. Suggestions were also made to split annex VI into two annexes: one on the health and safety management plan and one on the maritime security plan. With regard to the annexes related to environmental matters, the Commission had noted that guidelines would need to be prepared and had considered it more efficient to deal with comments raised in respect of those annexes when guidelines are developed ([ISBA/25/C/18](#), para. 39).

Schedule

42. A number of additional terms were suggested for the schedule, along with suggestions to redraft certain definitions with a view to further clarifying the terminology and concepts. It is noted that the issue of good industry practice is under review by the Commission ([ISBA/25/C/18](#), para. 40).



Council

Distr.: Limited
27 January 2020

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Item 6 of the provisional agenda*

Issues relating to the election in 2021 of members of the Legal and Technical Commission

Submitted on behalf of Australia, Canada, France, Germany, Italy, Norway, Spain and the United Kingdom of Great Britain and Northern Ireland

Proposal to amend draft decision [ISBA/25/C/L.2](#) of the Council of the International Seabed Authority relating to the election of members of the Legal and Technical Commission

The Council of the International Seabed Authority,

Recalling its decision [ISBA/22/C/29](#) of 22 July 2016, in particular paragraph 2,

Considering the increase in complexity of the matter of the election of members of the Legal and Technical Commission,

Recalling article 163, paragraphs 3 and 4, of the United Nations Convention on the Law of the Sea, which provides that members of the Commission shall have appropriate qualifications in the area of competence of the Commission; that States parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the Commission; and that, in the election of members of the Commission, due account shall be taken of the need for equitable geographical distribution and the representation of special interests,

Also recalling article 163, paragraph 8 of the Convention, which provides that members of the Commission shall have no financial interest in any activity relating to exploration and exploitation in the Area,

Further recalling that in accordance with article 165, paragraph 1, of the Convention, members of the Commission shall have appropriate qualifications; and the Council shall endeavour to ensure that the membership of the Commission reflects all appropriate qualifications,

Desiring to establish more clarity in the process of future elections of members of the Commission,

* [ISBA/26/C/L.1](#).



1. *Takes note* of the report of the Secretary-General on the election of members of the Legal and Technical Commission;¹
2. *Confirms* that appropriate qualifications in relevant fields of expertise, equitable geographical representation, and representation of special interests, shall guide the process of election of members of the Commission;
3. *Requests* that the Secretary-General provide, in consultation with the Commission and no later than 15 months before an election, a report for consideration by the Council of the International Seabed Authority identifying the ideal size of the next Commission to be elected and the composition of the expertise among its members;
4. *Decides* that any future change in the size and composition of the Commission shall be determined by the Council no later than one year before the election after consideration of the report requested in paragraph 3 above and taking into account paragraph 2 above;
5. *Emphasizes* that States Parties shall take into account the considerations set out in the third preambular paragraph of the present decision.

¹ ISBA/23/C/2.



Council

Distr.: General
9 December 2019

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Item 11 of the provisional agenda*

Report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission

Implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission

Report of the Secretary-General

I. Background

1. At its 258th meeting, held on 19 July 2019, the Council of the International Seabed Authority adopted a decision relating to the reports of the Chair of the Legal and Technical Commission (ISBA/25/C/37). In paragraph 26 of the decision, the Council requested that the Secretary-General report to it on the implementation of the decision at its twenty-sixth session and that such annual reporting remain on the agenda of the Council as a standing item. The present report has been prepared accordingly and provides an update on the implementation of the decision of the Council as at 2 December 2019.
2. Section II of the present report provides an update on the work in progress concerning the draft regulations on exploitation of mineral resources in the Area, in response to the matters addressed in paragraphs 2 to 10 of the decision of the Council.
3. Section III covers issues relevant to contractors, as raised in paragraphs 11 to 17 of the decision of the Council.
4. In response to paragraph 19 of the decision of the Council, environmental matters, including the drafting of environmental goals, objectives and principles, together with the development of regional environmental management plans, in particular where there are currently exploration contracts, are reviewed in section IV.
5. Section V provides an update on the implementation of the data management strategy of the Authority since the launch of the database, as mentioned in paragraph 20 of the decision of the Council.
6. In response to the concern about the sharp deficit in the voluntary trust fund, as noted by the Council in paragraph 23 of its decision, section VI of the present report provides an update on the balance of the fund.

* ISBA/26/C/L.1.



7. Further progress on implementation will be the subject of an addendum that will be prepared for the second part of the twenty-sixth session.

II. Draft regulations on exploitation of mineral resources in the Area

8. In paragraph 2 of its decision, the Council welcomed the continued work of the secretariat and the Commission on the regulations on exploitation and requested that the Commission undertake work on standards and guidelines as a matter of priority. Consequently, the indicative programme of work for part I of the twenty-sixth session has been prepared in such a way as to enable the Council to continue its review of the draft regulations as a matter of priority, bearing in mind the process for the development of standards and guidelines proposed by the Commission, as set out in the report of the Chair of the Legal and Technical Commission on the work of the Commission at the second part of its twenty-fifth session ([ISBA/25/C/19/Add.1](#)).

A. Compilations of proposals and observations

9. Members of the Council will recall that, in July 2019, the Council met in an informal session to consider the draft regulations on the basis of the text issued by the Commission ([ISBA/25/C/WP.1](#)), along with a note by the Commission explaining the changes made to the text as well as areas requiring further consideration ([ISBA/25/C/18](#)). In paragraphs 7 and 8 of its decision, the Council decided that additional written comments on the draft regulations, including specific drafting suggestions, could be sent to the secretariat no later than 15 October 2019, and requested the secretariat to prepare a compilation of the proposals and observations sent by members of the Council and a compilation of proposals and observations sent by other States members of the Authority, observers and other stakeholders, to be submitted by the President of the Council and published no later than 30 December 2019, for consideration by the Council at its twenty-sixth session.

10. In response to the decision, 39 submissions were received by the secretariat from members of the Council, other States members of the Authority, observers and other stakeholders, and the submissions were posted on the website of the Authority in line with the above-mentioned request of the Council.¹ In addition to the compilations of proposals and observations sent and posted on the website, the secretariat prepared an overview of the main thematic issues raised in the written submissions ([ISBA/26/C/2](#)), as well as a conference room paper containing a compilation of the specific drafting proposals sent by members of the Council. In the overview, a set of critical areas is identified for discussion by the Council, with a view to advancing the work on the draft regulations.

11. Members of the Council will recall that, in respect of the development of a payment mechanism, the Council established an open-ended working group in 2018 to discuss the financial model (see [ISBA/24/C/8/Add.1](#), annex II). At its session in July 2019, the Council considered the report of the Chair of the open-ended informal working group on the outcome of its second meeting, held on 11 and 12 July 2019 ([ISBA/25/C/32](#)). The Council welcomed the progress made by the working group but recognized that further work still needed to be done. The Council therefore decided that the informal working group should convene its third meeting in 2020. Accordingly, the third meeting is scheduled for 13 and 14 February 2020.

¹ See www.isa.org.jm/legal-instruments/ongoing-development-regulations-exploitation-mineral-resources-area.

B. Standards and guidelines

12. The Council, in paragraph 3 of its decision, took note of the recommendations made by the Commission with regard to the outcomes of and suggestions made at the workshop held in Pretoria from 13 to 15 May 2019 on the development of standards and guidelines for activities in the Area (ISBA/25/C/19/Add.1, annex and enclosures I and II). In paragraphs 4 and 5 of its decision, the Council emphasized that any standards, draft environmental goals, objectives and principles required discussion and adoption by the Council, and expressed its intention to ensure the thorough and timely development of the regulations, bearing in mind that necessary standards and guidelines should be developed before the adoption of the regulations (see also section IV below).

13. At the first part of its session, to be held from 24 February to 6 March 2020, the Commission is expected to advance its consideration of a number of standards and guidelines, in particular those that, as it suggested, need to be in place by July 2020 and those to be initiated immediately but completed after July 2020. In that context, the Commission established two technical working groups to address standards and guidelines for environmental impact assessments and the preparation of an environmental impact statement and guidelines for the preparation of environmental management and monitoring plans on the one hand, and standards and guidelines on the expected scope and standard of baseline data collection on the other. To assist the Commission, the secretariat has also undertaken work, with the support of consultants where necessary, to develop, inter alia, the text of standards and guidelines for the preparation and assessment of an application for the approval of a plan of work for exploitation; for the development and application of environmental management systems; on tools and techniques for hazard identification and risk assessments; for the safe management and operation of mining support vessels; for the form and calculation of an environmental performance guarantee; and for the preparation and implementation of emergency response and contingency plans.

III. Activities of contractors

A. Issues relating to the 2018 annual reports

14. With reference to paragraphs 12 to 14 of the decision of the Council, the Secretary-General took the opportunity, at the third annual consultation between the Secretary-General and the contractors, held in Changsha, China, from 10 to 12 October 2019, to convey to the contractors the general comments made by the Commission in relation to the annual reports. Bilateral meetings were also held between individual contractors and the technical staff of the secretariat to review specific technical issues relating to those contractors. Twenty-six contractors were represented at the meeting.

15. Shortly after the meeting, for the purpose of resource reporting in annual reports, all contractors were reminded of the agreed mineral resource reporting template of the Authority.

16. As at 2 December 2019, individual feedback from the Commission in writing, including questions and requests for clarification, on the 2018 annual reports had been sent to each contractor. The final responses to the feedback from the Commission will be included in the contractors' annual reports for 2019, which are due by 31 March 2020.

17. The Secretary-General will continue to work with the contractors to address reporting issues.

B. Issues relating to the transparency of contracts

18. It was previously reported to the Council that work was currently in progress to draw up a summary template, for public release, that would cover the key elements of the non-standard provisions of each contract (see [ISBA/25/C/12](#), paras. 24–25). In this regard, at the meeting in Changsha, the format of the template was finalized,² and it was agreed that the Secretary-General would report on the decision of contractors to voluntarily submit the completed templates to the Council for publication and would inform the Council of the number of contractors that had already submitted the template at that time. It was agreed that contractors would submit completed templates on a rolling basis, but no later than 31 March 2020. Contractors further agreed to continue to explore whether there was any further information in the annual reports that could be categorized as non-confidential.

19. As at 2 December 2019, no contractor had submitted the template, although two contractors (the Federal Institute for Geosciences and Natural Resources of Germany and the Government of Poland) indicated that they had already published their contracts in full on their websites, as required by their respective national laws.

C. Contractor training programmes

20. In relation to the implementation of training programmes, as referred to in paragraph 17 of the decision of the Council, 25 training placements were awarded from July to December 2019. Details are provided in the annex to the present document.

D. Issues of alleged non-compliance by contractors

21. In relation to paragraph 13 of the decision of the Council, the Secretary-General has communicated in writing the various issues identified during the Commission's review of the annual reports of contractors to the relevant contractors and their sponsoring States and has held meetings with the contractors and the respective sponsoring States. The Secretary-General will continue to engage with those parties and is confident that any outstanding matters will be resolved.

22. In paragraph 15 of its decision, the Council requested the Secretary-General to report to it annually, identifying instances of alleged non-compliance and the regulatory action recommended or to be taken in accordance with the United Nations Convention on the Law of the Sea, the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 and the regulations on prospecting and exploration, including any monetary penalties to be imposed by the Council.

23. As at 2 December 2019, the Secretary-General had not identified any issues of alleged non-compliance.

IV. Environmental matters

A. Draft environmental goals, objectives and principles

24. In paragraph 4 of its decision, the Council emphasized that any standards, draft environmental goals, objectives and principles required discussion and adoption by the Council.

² The template will be made available to the Council in due course.

25. Pursuant to the decision, relevant information was compiled by the secretariat and transmitted to the Commission in support of its efforts to articulate environmental goals and objectives as part of its work on standards and guidelines, drawing on relevant provisions of the Convention, international commitments related to environmental goals and targets and relevant policy documents, and, where appropriate, relevant scientific literature.

B. Review and development of regional environmental management plans, in particular where there are currently exploration contracts

26. As members of the Council will recall, the development of regional environmental management plans is an essential element of the strategic plan for the period 2019–2023, adopted by the Assembly of the International Seabed Authority in 2018 (ISBA/24/A/10), which occupies a central position in the high-level action plan endorsed by the Assembly in 2019 (ISBA/25/A/15 and ISBA/25/A/15/Corr.1). The Council also considered it essential that the development of those plans be carried out under the auspices of the Authority through a transparent and coordinated process in the light of its jurisdiction under the Convention and the 1994 Agreement (see ISBA/24/C/8). Plans are established by a decision of the Council, on the recommendation of the Commission,³ and each contractor “undertakes ... to comply with ... the decisions of relevant organs of the Authority”, including those establishing regional environmental management plans.⁴

27. As in the case of the first-ever environmental management plan (established for the Clarion-Clipperton Fracture Zone in 2012), the establishment of regional environmental management plans is representative of environmental policy decisions that the Convention expressly empowers the Council to take. Those plans are embodied in Council decisions. The development of further plans wherever activity takes place, which is at the core of the strategic plan for the period 2019–2023, confirms the process to establish plans as environmental policy instruments. Moreover, the establishment of such plans represents one of the appropriate and necessary measures that the Authority may take in accordance with article 145 of the Convention to ensure effective protection of the marine environment from harmful effects that may arise from activities in the Area. The use of the term “measure” underlines its broad reach to encompass environmental policy nature instruments, such as regional environmental management plans.

28. In paragraph 19 of its decision, the Council encouraged the secretariat and the Commission to make progress on the development of regional environmental management plans, in particular where there are currently exploration contracts, while taking note of the report of the Secretary-General on the implementation of the Authority’s strategy for the development of regional environmental management plans for the Area (ISBA/25/C/13), including a programme of work to develop those plans through a series of workshops.

29. In accordance with the tentative schedule set out in document ISBA/25/C/13, several workshops have been planned during 2019 and 2020 to facilitate the review and development of regional environmental management plans.

30. An expert workshop on deep Clarion-Clipperton Zone biodiversity synthesis was convened by the secretariat and the Deep Clarion-Clipperton Zone (CCZ) Project

³ For an illustration of this process in the case of the environmental management plan for the Clarion-Clipperton Fracture Zone, see ISBA/18/C/22 and ISBA/17/LTC/7.

⁴ Annex IV, section 13.2 (b) of each set of regulations of the International Seabed Authority on prospecting and exploration.

and hosted by the University of Hawaii in Friday Harbor, United States of America, from 1 to 4 October 2019. The main objectives of the workshop included the following: (a) to review and analyse recent sea-floor ecosystem data from the Clarion-Clipperton Zone; (b) to synthesize patterns of biodiversity, biogeography, genetic connectivity, ecosystem function and habitat heterogeneity along and across the Clarion-Clipperton Zone; and (c) to assess the effectiveness of the existing network of areas of particular environmental interest, in particular its representativeness in relation to exploration contract areas. The workshop was an essential step in the review of the environmental management plan for the Clarion-Clipperton Zone, including the consideration of the potential need for additional areas of particular environmental interest. The report on the workshop will be made available on the workshop website⁵ and will be submitted to the Commission for its consideration during the first part of the twenty-sixth session.

31. A workshop on the regional management plan for the Area of the northern Mid-Atlantic Ridge was held in Évora, Portugal, from 25 to 29 November 2019, in collaboration with the Atlantic regional environmental management plan project (funded by the European Commission) and the Government of Portugal. The main objectives of the workshop included the following: (a) to review, analyse and synthesize scientific data and information on ecosystems and habitats of the northern Mid-Atlantic Ridge; (b) to review current exploration activity within contract areas and the distribution of resources (polymetallic sulphides) along the northern Mid-Atlantic Ridge; and (c) to describe potential areas that could be impacted by the exploitation of mineral resources in the Area and would require enhanced management measures, including through the designation of areas of particular environmental interest. As inputs for the workshop discussion, the following background documents were prepared and made available: (a) a data report in which 75 geographic information system overlays of biogeographical, physical, geological and biological data were compiled and synthesized; and (b) a draft regional environmental assessment report containing a descriptive analysis of the environment and mineral resources of the region. The report on the workshop will be made available on the workshop website and will be submitted to the Legal and Technical Commission for its consideration during the first part of the twenty-sixth session.

32. The scientific results of the above-mentioned workshop held in Portugal will provide inputs for the second workshop on the same region, which will be convened by the secretariat in Saint Petersburg, Russian Federation, from 15 to 19 June 2020, in collaboration with the Atlantic regional environmental management plan project and the Ministry of Natural Resources and Environment of the Russian Federation. The workshop will be focused on identifying environmental management measures for inclusion in the draft regional environmental management plan.

33. A second workshop on the development of a regional environmental management plan in the cobalt-crust area of the north-west Pacific will be convened by the secretariat in the province of Jeju, Republic of Korea, from 18 to 22 May 2020, in collaboration with the Ministry of Oceans and Fisheries of the Republic of Korea and the Korea Institute of Ocean Science and Technology, and will build on the work of the first workshop, held in Qingdao, China, in May 2018.

⁵ www.isa.org.jm/workshop/deep-ccz-biodiversity-synthesis-workshop.

V. Data management strategy

34. In paragraph 20 of its decision, the Council welcomed the secretariat's progress towards the implementation of the data management strategy of the Authority, including public access to non-confidential data.

35. Subsequently, the public launch of the International Seabed Authority database (DeepData) was carried out as part of the special commemorative session of the Assembly convened to celebrate the twenty-fifth anniversary of the Authority.

36. With its public launch, the environmental data have been made available for public access and use, which will further enhance the collective ability of humanity to protect the marine environment in the Area.

37. Furthermore, the secretariat organized a side event on DeepData at United Nations Headquarters on 26 August 2019, at the third session of the intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, and delivered a presentation on the database at the International Conference on Legal, Scientific and Economic Aspects of Deep Seabed Mining, held in Kingston from 14 to 16 November 2019, and organized by the secretariat of the Authority and the Center for Oceans Law and Policy of the University of Virginia School of Law.

38. The secretariat continues its work on the following: (a) uploading of historical data submitted; (b) publication and quarterly updating of a list of all available files and a structured dataset on the DeepData website; and (c) finalization of the data management strategy report of the Authority, covering data identification, data storage, data provisioning, data processing and data governance, with a view to submitting it to the Commission in July 2020.

VI. Voluntary trust fund for the purpose of defraying the cost of participation of members of the Commission and of the Finance Committee from developing countries in meetings of the Commission and of the Committee

39. In paragraph 23 of the decision, the Council noted with concern the sharp deficit in the voluntary trust fund for the purpose of defraying the cost of participation of members of the Commission and of the Finance Committee from developing countries in meetings of the Commission and of the Committee, which was established in 2002.

40. As at 2 December 2019, the fund showed a negative balance of -\$12,559.84 after the costs of the two parts of the twenty-fifth session, in the amount of \$142,111, were recorded. Notes verbales were sent in September 2019 to urgently appeal to all members of the Authority to make contributions to the voluntary trust fund. While several requests for financial assistance had been received, no contributions had been made as at 2 December.

41. The urgency of the situation cannot be overstated, as the participation of several members of the Legal and Technical Commission at its next meeting, to be held from 24 February to 6 March 2020, could be compromised.

VII. Recommendations

42. The Council is invited to take note of the present report and to provide such guidance as may be necessary.

Annex

Contractor training programmes, July–December 2019

<i>Contractor</i>	<i>Training type</i>	<i>Number of trainees</i>
Nauru Ocean Resources Inc.	At sea	4
Nauru Ocean Resources Inc.	Environmental workshop	4
Ocean Mineral Singapore Pte. Ltd.	Internship on adaptive path-planning framework	1
Interoceanmetal Joint Organization	Comprehensive six-week multidisciplinary training in project management relating to polymetallic nodules	2
Ministry of Natural Resources and Environment of the Russian Federation	At sea	2
Japan Oil, Gas and Metals National Corporation	On land/at sea	4
Government of the Republic of Korea	Three-month internship	1
Marawa Research and Exploration Ltd.	Underwater Mining Conference, 2019	2
Deep Ocean Resources Development Co. Ltd.	At sea	5
Total training placements awarded		25



Council

Distr.: General
17 December 2019

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Item 8 of the provisional agenda*

**Status of contracts for exploration and related matters,
including information on the periodic review of the
implementation of approved plans of work for exploration**

Status of contracts for exploration and related matters, including information on the periodic review of the implementation of approved plans of work for exploration

Report of the Secretary-General

I. Status of contracts for exploration and related matters

1. Contracts currently pertain to each of the three mineral resources for which the International Seabed Authority has adopted regulations on prospecting and exploration. These are polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts.
2. As at 31 December 2019, 30 contracts for exploration had entered into force, of which 18 were for polymetallic nodules, 7 were for polymetallic sulphides and 5 were for cobalt-rich ferromanganese crusts. For each mineral resource, a complete list, containing the name of the contractor, the sponsoring State or States, if applicable, the general location of the exploration area and the dates of entry into force and expiry of each contract, is provided in annex I to the present report.
3. A contract for exploration for polymetallic nodules, relating to an application for approval of a plan of work for exploration submitted by the Beijing Pioneer Hi-Tech Development Corporation and approved by the Council at the twenty-fifth session, in 2019, was signed on 18 October 2019.

* ISBA/26/C/L.1.



II. Periodic review of the implementation of approved plans of work for exploration

4. In accordance with each of the three sets of regulations on prospecting and exploration and the standard clauses of contracts for exploration,¹ the contractor and the Secretary-General are to undertake jointly a periodic review of the implementation of a plan of work for exploration at intervals of five years. The Secretary-General may request the contractor to submit such additional data and information as may be necessary for the purposes of the review. In the light of the review, the contractor is required to make such adjustments to its plan of work as are necessary and to indicate its programme of activities for the following five-year period, including a revised schedule of expected yearly expenditure. The Secretary-General is to report on the review to the Legal and Technical Commission and the Council. Furthermore, if appropriate, the Secretary-General is to indicate in the report whether any observations transmitted to him by States parties to the Convention concerning the manner in which the contractor has discharged its obligations under the regulations relating to the protection and preservation of the marine environment were taken into account in the review.

5. In conducting periodic reviews, the Secretary-General has adopted the practice of holding consultations with individual contractors to discuss the implementation of the plan of work in more detail and, in particular, to identify any concerns arising from the five-year periodic report. This also affords an opportunity to remind contractors that the programme of activities must be implemented in full compliance with the terms of the contract and the rules, regulations and procedures of the Authority.

6. Following discussions in the Legal and Technical Commission, the Secretary-General has also introduced the practice of holding consultations with the Commission on the content of periodic review reports submitted by contractors (in session or intersessionally depending on the timing of the reports). Comments and suggestions made by the Commission have therefore been taken into account in connection with the periodic review reports submitted by contractors in 2019, as described below and listed in annex II.

A. Periodic reviews in 2019

1. Status of periodic reviews as at 31 December 2019

Periodic review of the implementation of the approved plan of work for exploration for polymetallic nodules by UK Seabed Resources Ltd. (first contract)

7. Following an initial meeting held in December 2018, a periodic report was submitted in February 2019. The Secretary-General and the contractor held a follow-up meeting in Kingston in July 2019, during which the Secretary-General requested additional information in order to complete the review process. In particular, the contractor was requested to consider submitting a revised programme of activities for the first contract for the second five-year period, as well as estimated annual expenditures and a training programme for the first contract. A further update will be provided to the Council at its meeting in February 2020.

¹ See regulation 28 of the regulations on prospecting and exploration for polymetallic nodules in the Area (ISBA/19/C/17, annex, and ISBA/20/A/9), regulation 30 of the regulations on prospecting and exploration for polymetallic sulphides in the Area (ISBA/16/A/12/Rev.1, annex), regulation 30 of the regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area (ISBA/18/A/11, annex) and standard clause 4.4 of the contracts for exploration.

Periodic review of the implementation of the approved plan of work for exploration for cobalt-rich ferromanganese crusts by China Ocean Mineral Resources Research and Development Association

8. The Secretary-General held a meeting with China Ocean Mineral Resources Research and Development Association in Beijing on 17 October 2019. During the meeting, additional information was requested from the contractor to support assessment of the progress towards building an environmental baseline and how this will be addressed in the next five years.

Periodic review of the implementation of the approved plan of work for exploration for polymetallic nodules by Global Sea Mineral Resources NV

9. The report was received on 31 March 2019, coinciding with the annual report evaluation period. The secretariat is currently reviewing the material provided by the contractor and expects to complete the periodic review process by 31 January 2020.

Periodic review of the implementation of the approved plan of work for exploration for polymetallic sulphides by the Government of the Republic of Korea

10. The report was received on 28 June 2019. The secretariat is currently in the process of reviewing the material provided by the contractor and expects to complete the periodic review process by 28 February 2020.

Periodic review of the implementation of the approved plan of work for exploration for polymetallic sulphides by Institut français de recherche pour l'exploitation de la mer

11. The periodic report was received on 5 August 2019, while the proposed programme of activities for the next five-year period was received on 13 November 2019. The Secretary-General held a meeting with Institut français de recherche pour l'exploitation de la mer in Paris on 16 December 2019. During the meeting, additional information was requested from the contractor, including clarifications with respect to the proposed programme of activities. The periodic review is in progress, and it is anticipated that the process will be completed by 28 February 2020.

Periodic review of the implementation of the approved plan of work for exploration for polymetallic nodules by Marawa Research and Exploration Ltd.

12. The Secretary-General met with the contractor on 13 August 2019 and held informal discussions regarding the forthcoming periodic review. In order to assist the contractor in compiling its periodic report, the secretariat prepared a preliminary evaluation of the contractor's reported activities against the workplan contained in schedule 2 of the contract, together with the comments made by the Commission in relation to these activities. As an outcome of the meeting, the contractor was granted a short extension to submit its report, which was received on 28 November 2019. The Secretariat is currently in the process of reviewing the material provided by the contractor and expects to complete the periodic review process by 28 February 2020.

Periodic review of the implementation of the approved plan of work for exploration for polymetallic nodules by Ocean Mineral Singapore Pte. Ltd.

13. A periodic report was due to be submitted by 24 November 2019. The contractor had requested an extension to the end of December 2019 but has since requested a further one-month extension. It is proposed that the review process will be completed by 31 March 2020.

2. Assessment of the periodic review process to date

14. From the previous paragraphs, it is evident that the secretariat is facing challenges in addressing the exponential increase in periodic reviews resulting from the increase in the number of contracts signed by the Authority, each of which requires two periodic reviews over the duration of the contract. In particular, since 2015, 12 new contracts have been signed, an increase of 66 per cent in the number of annual reports, while the resources of the secretariat have remained unchanged, with the evaluation of annual reports competing for these same resources.

15. These reviews sometimes require several rounds of exchanges between the parties to the contract, affecting the overall duration of the periodic review process. A multidisciplinary assessment of the reports is also required. While all the substantive offices of the secretariat are called upon in order to ensure a swift and thorough examination of the reports and proposed programmes of activities, the heavy and increasing workload of the secretariat and the increasing number of annual reports being reviewed, compounded by delays in the submission of the periodic reports, have posed challenges for the scheduling and completion of the reviews.

B. Periodic reviews in 2020

16. The table in annex II to the present report provides a breakdown of the pending periodic reports as at 31 December 2019 and those to be carried out in 2020. The reviews will be conducted and reported to the Legal and Technical Commission and the Council in due course.

C. Standardization of internal processes for periodic reports

17. In the light of experience, the Contract Management Unit of the secretariat is taking measures to streamline the process of periodic reporting, including the following:

(a) Formalizing and improving the existing internal standard operating procedures to establish time frames for the key tasks. These will also incorporate the time provided for the consultations with the Commission to assist the Secretary-General, as noted in paragraph 6 above;

(b) Developing, with the Commission, guidance for contractors on the content, format and structure of periodic reports in order to ensure consistency of reporting. Unlike annual reports, there is currently no formal guidance on the format and content of periodic reports. This has resulted in a variety of reporting formats, and the advice of the secretariat is increasingly sought by contractors on the format of the reports and the level of detail required. Such guidance would standardize the reporting format and assist in reducing the size of the reports to include only the most relevant content and could provide for an element of self-evaluation by contractors. This would help to reduce the time spent by contractors on preparing the reports and facilitate the reviews by the secretariat and the Commission.

III. Recommendations

18. The Council is invited to take note of the status of the exploration contracts, the information on the periodic reviews of the implementation of the approved plans of work and the proposed development of guidance for contractors on the content, format and structure of periodic reports.

Annex I

Status of contracts for exploration

A. Contracts for exploration for polymetallic nodules

<i>Contractor</i>	<i>Date of entry into force</i>	<i>Sponsoring State(s)</i>	<i>General location of the exploration area</i>	<i>Date of expiry</i>
1 Interoceanmetal Joint Organization	29 March 2001 29 March 2016 ^a	Bulgaria, Cuba, Czechia, Poland, Russian Federation, Slovakia	Clarion-Clipperton Fracture Zone	28 March 2016 28 March 2021
2 JSC Yuzhmoregeologiya	29 March 2001 29 March 2016 ^a	Russian Federation	Clarion-Clipperton Fracture Zone	28 March 2016 28 March 2021
3 Government of the Republic of Korea	27 April 2001 27 April 2016 ^a	–	Clarion-Clipperton Fracture Zone	26 April 2016 26 April 2021
4 China Ocean Mineral Resources Research and Development Association	22 May 2001 22 May 2016 ^a	China	Clarion-Clipperton Fracture Zone	21 May 2016 21 May 2021
5 Deep Ocean Resources Development Co. Ltd.	20 June 2001 20 June 2016 ^a	Japan	Clarion-Clipperton Fracture Zone	19 June 2016 19 June 2021
6 Institut français de recherche pour l'exploitation de la mer	20 June 2001 20 June 2016 ^a	France	Clarion-Clipperton Fracture Zone	19 June 2016 19 June 2021
7 Government of India	25 March 2002 25 March 2017 ^b	–	Central Indian Ocean Basin	24 March 2017 24 March 2022
8 Federal Institute for Geosciences and Natural Resources	19 July 2006	Germany	Clarion-Clipperton Fracture Zone	18 July 2021
9 Nauru Ocean Resources Inc.	22 July 2011	Nauru	Clarion-Clipperton Fracture Zone (reserved area)	21 July 2026
10 Tonga Offshore Mining Limited	11 January 2012	Tonga	Clarion-Clipperton Fracture Zone (reserved area)	10 January 2027
11 Global Sea Mineral Resources NV	14 January 2013	Belgium	Clarion-Clipperton Fracture Zone	13 January 2028
12 UK Seabed Resources Ltd.	8 February 2013	United Kingdom of Great Britain and Northern Ireland	Clarion-Clipperton Fracture Zone	7 February 2028
13 Marawa Research and Exploration Ltd.	19 January 2015	Kiribati	Clarion-Clipperton Fracture Zone (reserved area)	18 January 2030

	<i>Contractor</i>	<i>Date of entry into force</i>	<i>Sponsoring State(s)</i>	<i>General location of the exploration area</i>	<i>Date of expiry</i>
14	Ocean Mineral Singapore Pte. Ltd.	22 January 2015	Singapore	Clarion-Clipperton Fracture Zone (reserved area)	21 January 2030
15	UK Seabed Resources Ltd.	29 March 2016	United Kingdom	Clarion-Clipperton Fracture Zone	28 March 2031
16	Cook Islands Investment Corporation	15 July 2016	Cook Islands	Clarion-Clipperton Fracture Zone (reserved area)	14 July 2031
17	China Minmetals Corporation	12 May 2017	China	Clarion-Clipperton Fracture Zone (reserved area)	11 May 2032
18	Beijing Pioneer Hi-Tech Development Corporation	18 October 2019	China	Western Pacific Ocean	17 October 2034

^a Five-year extension of contract granted at the twenty-second session (2016).

^b Five-year extension of contract granted at the twenty-third session (2017).

B. Contracts for exploration for polymetallic sulphides

	<i>Contractor</i>	<i>Date of entry into force</i>	<i>Sponsoring State(s)</i>	<i>General location of the exploration area</i>	<i>Date of expiry</i>
1	China Ocean Mineral Resources Research and Development Association	18 November 2011	China	South-West Indian Ridge	17 November 2026
2	Ministry of Natural Resources and Environment of the Russian Federation	29 October 2012	–	Mid-Atlantic Ridge	28 October 2027
3	Government of the Republic of Korea	24 June 2014	–	Central Indian Ocean	23 June 2029
4	Institut français de recherche pour l'exploitation de la mer	18 November 2014	France	Mid-Atlantic Ridge	17 November 2029
5	Federal Institute for Geosciences and Natural Resources	6 May 2015	Germany	Central Indian Ridge and South-East Indian Ridge	5 May 2030
6	Government of India	26 September 2016	–	Indian Ocean Ridge	25 September 2031
7	Government of Poland	12 February 2018	–	Mid-Atlantic Ridge	11 February 2033

C. Contracts for exploration for cobalt-rich ferromanganese crusts

<i>Contractor</i>	<i>Date of entry into force</i>	<i>Sponsoring State(s)</i>	<i>General location of the exploration area</i>	<i>Date of expiry</i>
1 Japan Oil, Gas and Metals National Corporation	27 January 2014	Japan	Western Pacific Ocean	26 January 2029
2 China Ocean Mineral Resources Research and Development Association	29 April 2014	China	Western Pacific Ocean	28 April 2029
3 Ministry of Natural Resources and Environment of the Russian Federation	10 March 2015	–	Magellan Mountains in the Pacific Ocean	9 March 2030
4 Companhia de Pesquisa de Recursos Minerais S.A.	9 November 2015	Brazil	Rio Grande Rise in the South Atlantic Ocean	8 November 2030
5 Government of the Republic of Korea	27 March 2018	–	East of the Northern Mariana Islands in the Pacific Ocean	26 March 2033

Annex II**Periodic reviews of the implementation of plans of work for exploration (pending as at 31 December 2019 and to be carried out in 2020)**

<i>Contractor</i>	<i>Type of resource</i>	<i>Expiration of five-year period^a</i>
Government of the Republic of Korea	Polymetallic sulphides	23 June 2019
Global Sea Mineral Resources NV	Polymetallic nodules	23 June 2019
Institut français de recherche pour l'exploitation de la mer	Polymetallic sulphides	17 November 2019
Marawa Research and Exploration Ltd.	Polymetallic nodules	18 January 2020
Ocean Mineral Singapore Pte. Ltd.	Polymetallic nodules	21 January 2020
Ministry of Natural Resources and Environment of the Russian Federation	Cobalt-rich ferromanganese crusts	9 March 2020
Federal Institute for Geosciences and Natural Resources	Polymetallic sulphides	5 May 2020
Companhia de Pesquisa de Recursos Minerais S.A.	Cobalt-rich ferromanganese crusts	8 November 2020
Interoceanmetal Joint Organization ^b	Polymetallic nodules	28 March 2021
UK Seabed Resources Ltd. (second contract)	Polymetallic nodules	28 March 2021
JSC Yuzhmorgeologiya ^b	Polymetallic nodules	28 March 2021

^a Not later than 90 days prior to the expiration of each five-year period from the date on which the contract enters into force, the contractor and the Secretary-General shall jointly undertake a review of the implementation of the plan of work for exploration under the contract (sect. 4.4 of the standard clauses for exploration contracts. See [ISBA/19/C/17](#), annex, [ISBA/16/A/12/Rev.1](#), annex, and [ISBA/18/A/11](#), annex).

^b Date of expiry of the five-year extension of contract granted at the twenty-second session (2016).



Council

Distr.: General
19 December 2019

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Item 7 of the provisional agenda*

Election to fill a vacancy on the Legal and Technical Commission in accordance with article 163, paragraph 7, of the United Nations Convention on the Law of the Sea, if any

Election to fill a vacancy on the Legal and Technical Commission in accordance with article 163, paragraph 7, of the United Nations Convention on the Law of the Sea

Note by the Secretary-General

1. The Council of the International Seabed Authority is invited to note that Christian Jürgen Reichert (Germany), member of the Legal and Technical Commission, tendered his resignation in a letter dated 12 December 2019. He had been elected a member of the Commission on 26 May 2008, for the remainder of the term of office of Michael Wiedicke-Hombach (Germany), who had resigned from the Commission. On 21 July 2011, Mr. Reichert had been elected a member of the Commission for a five-year term beginning on 1 January 2012 ([ISBA/17/C/21](#), para. 18) and re-elected a member of the Commission on 22 July 2016 for a term of five years beginning on 1 January 2017 (see [ISBA/22/C/29](#)).

2. In accordance with article 163, paragraph 7, of the United Nations Convention on the Law of the Sea and rule 80, paragraph 3, of the rules of procedure of the Council, in the event of the death, incapacity or resignation of a member of the Commission prior to the expiration of the term of office, the Council shall elect for the remainder of the term a member from the same geographical region or area of interest.

3. Article 163, paragraph 3, of the Convention and rule 81 of the rules of procedure of the Council provide that members of the Commission shall have appropriate qualifications in the area of competence of the Commission and that States parties shall nominate candidates of the highest standards of competence and integrity with qualifications in the relevant fields so as to ensure the effective exercise of the functions of the Commission.

4. By a note verbale dated 19 December 2019, the Permanent Mission of Germany to the International Seabed Authority informed the secretariat of the Authority of the nomination of Carsten Rühlemann, Head of the Marine Geology section at the Federal Institute for Geosciences and Natural Resources in the Department of Marine

* [ISBA/26/C/L.1](#).



Resource Exploration, as a candidate to fill the vacant seat on the Commission resulting from the resignation of Mr. Reichert. The curriculum vitae of Mr. Rühlemann is contained in the annex to the present note.¹

5. The secretariat invites the Council to take a decision on the election of Mr. Rühlemann to fill the current vacancy.

¹ The annex is being circulated in the language of submission only.

Annex

Curriculum vitae*

Carsten Rühlemann

Date of birth 5 May 1962
 Place of birth Hannover, Germany
 Citizenship German
 Work address Federal Institute for Geosciences and Natural Resources (BGR), Department of Marine Resource Exploration, Stilleweg 2, 30655 Hannover, Germany

Academic degrees

1996 PhD in Geology, University of Bremen
 1992 Diploma (MSc equivalent) in Geology, University of Göttingen
 1986 Diploma (MSc equivalent) in Cartography, University of Applied Sciences of Berlin

Academic positions

2016–present Head of Marine Geology section at BGR
 2003–2016 Research Scientist at BGR, Department of Marine Resource Exploration
 2002–2003 Research Fellow in BMBF project “Rapid Climate Changes in Western Tropical Atlantic-Assessment of the biogenous and sedimentary record”, University of Bremen
 Research Fellow in DFG project “Paleohydrography of the Westiberic Continental Slope”, University of Bremen
 1999–2002 Research Fellow in DFG project “Paleohydrography of the Westiberic Continental slope”, University of Bremen
 1996–1999 Research Fellow in DFG project “Paleo Caribbean-Late Quaternary evolution of the Caribbean-Atlantic water mass exchange”, University of Bremen
 1992–1996 Research Assistant, Division of Marine Geology, University of Bremen

Research work

Marine resource exploration strategies with emphasis on manganese nodules and seafloor massive sulphides

Environmental baseline and monitoring aspects of deep-sea resource exploration, with emphasis on oceanography and sedimentology

Late Quaternary paleoceanography and paleoclimatology

* Curricula vitae are issued without formal editing.

Professional activities

Coordination of the work programme in the Germany license area for the exploration of manganese nodules

Member of the German delegation at the International Seabed Authority in Kingston, Jamaica

Participation in 24 cruises with German, French and US American research vessels (chief scientist on 7 cruises)

Selected peer-reviewed publications

Kuhn, T., Uhlenkott, K., Vink, A., Rühlemann, C., Martinez Arbizu, P. (2019). Manganese nodule fields from the NE Pacific as benthic habitats. In: Harris, P.T., Baker, E.K. (Eds): *Seafloor Geomorphology as Benthic Habitat: GeoHab Atlas of seafloor geomorphic features and benthic habitats (Second Edition)*. Elsevier, in press.

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Rühlemann, C., S. Mulitza, G. Lohmann, A. Paul, M. Prange, G. Wefer (2004): Intermediate-depth warming in the tropical Atlantic related to weakened thermohaline circulation: Combining paleoclimate data and modeling results for the last deglaciation. *Paleoceanography*, 19, PA1025, doi:10.1029/2003PA000948.

Rühlemann, C., S. Mulitza, P.J. Millier, G. Wefer, R. Zahn (1999): Warming of the tropical Atlantic Ocean and slowdown of thermohaline circulation during the last deglaciation. *Nature*, 402: 511–514.



Council

Distr.: General
6 January 2020

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Item 12 of the provisional agenda*

Draft regulations for exploitation of mineral resources in the Area

Procedure for the development, approval and review of regional environmental management plans

**Submitted by the delegations of Germany and the Netherlands,
with co-sponsorship by Costa Rica**

Introduction

1. Regional environmental management plans have been interpreted as essential tools to ensure effective protection of the marine environment according to article 145 of the United Nations Convention on the Law of the Sea.¹ During the consultation process on the draft exploitation regulations, many States parties stressed that, in principle, a plan of work for exploitation should not be approved by the Council unless a regional environmental management plan were in place for the relevant area.
2. A regional environmental management plan provides region-specific information that facilitates the decision-making process for exploitation activities in the relevant areas. Region-specific objectives, taking into account the carrying capacity of the region, cumulative effects and conflicts with other legitimate uses, can only be considered appropriately through regional environmental management plans. The plans furthermore provide for long-term planning reliability and a level playing field for contractors, in particular when shifting from exploration to exploitation.
3. The International Seabed Authority has already approved the environmental management plan for the Clarion-Clipperton Fracture Zone region. Regional environmental management plans for polymetallic sulphides along the northern Mid-Atlantic Ridge and cobalt-rich ferromanganese crusts in the north-west Pacific are under development. Furthermore, the Authority has determined several specific

* [ISBA/26/C/L.1](#).

¹ See, for example, the adoption of the environmental management plan for the Clarion-Clipperton Zone ([ISBA/17/LTC/7](#) and [ISBA/18/C/22](#)), the submission of the Netherlands in 2014 ([ISBA/20/C/13](#)) and the International Seabed Authority's strategic plan 2019–2023.



regions as priority areas for the development of regional environmental management plans (see [ISBA/24/C/3](#) and [ISBA/25/C/13](#)).

Background

4. According to the strategic plan adopted by the Assembly in 2018 ([ISBA/24/A/4](#)), a regional environmental management plan is a means to protect the marine environment. As indicated under strategic direction 3 – protection of the marine environment – a regional environmental management plan should be developed, implemented and kept under review.

5. The draft regulations on exploitation of mineral resources in the Area – in the current version – require that a contractor’s environmental impact statement (draft regulation 47), environmental management and monitoring plan (draft regulation 48) and closure plan (annex VIII) be in accordance with the relevant regional environmental management plan.

6. In November 2019, the secretariat of the Authority, having consulted the Legal and Technical Commission, issued a document on guidance to facilitate the development of regional environmental management plans.²

7. The required contents of regional environmental management plans, the procedure for the development, approval and review of such plans, as well as the relationship between the plans and activities in the Area, have so far not been explicitly clarified and agreed.

8. During the consultation process on the draft exploitation regulations, many States parties expressed the view that a standardized approach concerning the development and the contents of regional environmental management plans was required.

9. To this end, Germany and the Netherlands, with co-sponsorship by Costa Rica, hereby submit a proposal for a procedure for the development, approval and review of regional environmental management plans.

10. A proposal for a standardized regional environmental management plan template is contained in a separate submission by Germany and the Netherlands, with co-sponsorship by Costa Rica.

11. Both documents reflect the outcome of the international workshop held on the theme “Towards a standardized approach for regional environmental management plans in the Area”, which was organized by Germany, the Netherlands and the Pew Charitable Trusts in Hamburg, Germany, from 11 to 13 November 2019. The workshop was attended by more than 80 experts, as well as by members of the Council, organs of the Authority and other international bodies, reflecting broad regional representation and a variety of stakeholder perspectives.

12. The need for a standardized approach as well as for defined minimum requirements and contents for all regional environmental management plans and the need for a specified procedure were strongly supported by the workshop participants.

13. The report on the workshop will be submitted to the Council during the first part of the twenty-sixth session of the Authority.

² See www.isa.org.jm/workshop/workshop-regional-environmental-management-plan-area-northern-mid-atlantic-ridge.

Rationale for a procedure for the development, approval and review of regional environmental management plans

14. In carrying out its regulatory function for deep seabed mining, the Authority has the obligation to ensure that the marine environment is protected from any harmful effects that may be caused by mining activities. Regional environmental management plans are essential tools for ensuring effective protection of the marine environment.

15. A procedure for developing, approving and reviewing a regional environmental management plan should be in place as part of the regulatory function of the Authority.

16. The United Nations Convention on the Law of the Sea and the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 contain the legal basis for developing such a procedure by the Authority and its organs (see section 1 of the annex to the present document).

17. The proposed procedure set out in the annex to the present document addresses the explicit role of the Council and the Legal and Technical Commission, as well as the role of an independent body (expert committee). This expert committee would be responsible for preparing a draft regional environmental management plan for a specific region and for submitting the draft to the Legal and Technical Commission for its consideration and recommendation for adoption by the Council.

18. The procedure provides for the involvement of all stakeholders, including scientists and other international bodies, in the preparation of a regional environmental management plan. The procedure also facilitates the development of broad consensus on any decisions regarding mining activities in the Area, while ensuring the effective protection of the marine environment.

19. A procedure for developing, approving and reviewing regional environmental management plans is required as an essential part of good governance, promoting issues such as accountability and transparency, reliability and acceptability, the clarification of standards of environmental protection and a level playing field for contractors.

20. There is a sense of urgency with regard to the establishment of a procedure for developing, approving and reviewing regional environmental management plans, in view of the progress of the drafting of the draft regulations on exploitation of mineral resources in the Area. This sense of urgency is reflected in the document on guidance to facilitate the development of regional environmental management plans, as well as in the many workshops that are being convened to address the development of the plans.

Recommendations

21. The Council is invited to take note of the above issues when considering the annex to the present document.

22. The Council is further invited to adopt the procedure in the annex with the aim of ensuring that the development, approval and review of regional environmental management plans are conducted in a clear and unambiguous manner.

Annex

Procedure for the development, approval and review of regional environmental management plans

1. Introduction

In carrying out its regulatory function for seabed mining in the Area, the International Seabed Authority has the obligation to ensure that the marine environment is effectively protected from harmful effects that may be caused by seabed mineral activities. In section 1, paragraph 5, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, it is stipulated that:

Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

[...]

- (g) Adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment;
- (h) Promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;
- (i) Acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;
- (j) Assessment of available data relating to prospecting and exploration;
- (k) Timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment.

A regional environmental management plan should assist the Authority in achieving those objectives. The procedure for regional environmental management plan development, set out below, also takes into account that:

- (a) Pursuant to article 162, paragraph 2 (d), of the United Nations Convention on the Law of the Sea, the Council has the power to establish such subsidiary organs as it deems necessary for the exercise of its functions;
- (b) The Legal and Technical Commission shall make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field (art. 165, para. 2 (e), of the Convention) and, in the exercise of its functions, the Commission may consult with, *inter alia*, any international organizations with competence in the subject matter of such consultation (art. 163, para. 13, of the Convention).

2. Initiation of the regional environmental management plan development process

For each regional area that is under consideration for the conduct of exploitation activities in the Area, a regional environmental management plan shall be developed by the Authority.

The Council is responsible for the initiation of the development of each regional environmental management plan.

3. Development of a regional environmental management plan

Expert committee

The Council, acting on a recommendation of the Legal and Technical Commission, shall establish an expert committee for the development of a first draft of the regional environmental management plan for a specific region.

This expert committee should be established as a technical body of the Legal and Technical Commission and be characterized as an ad hoc committee that is assigned to develop and review one regional environmental management plan for a specific region. The committee should support the Commission in its task of advising the Council.

The selection and appointment of experts should be undertaken in line with relevant guidelines and United Nations procurement processes, with a focus on competences identified as relevant for the specific regional environmental management plan. It should be configured as an independent expert body, comprising about five to seven experts acting in their individual capacity. The experts should have expertise in the following areas, at a minimum: biology, geology, oceanography, spatial planning and modelling. The expertise in biology shall include, at a minimum, expertise related to biodiversity, connectivity and the ecosystem function of benthic and pelagic communities.

Region-specific knowledge should be considered in particular when selecting the experts.

Members of the expert committee shall have no personal financial interest in any activity relating to exploration and exploitation in the Area.

First draft of the regional environmental management plan

The expert committee is responsible for preparing a draft of the regional environmental management plan, on the basis of all available data and the information from the workshops and consultations described below. The content of the regional environmental management plan should follow the format set out in the regional environmental management plan template ([ISBA/26/C/7](#), annex).

The secretariat of the Authority should facilitate the development of the first draft of the regional environmental management plan.

The expert committee should take steps to ensure it has access to all available data. These data include:

- (a) Contractor data submitted to the Authority that pertain to the region and are not deemed as confidential in accordance with the rules, regulations and procedures of the Authority;
- (b) Scientific information, in particular from peer-reviewed articles and publicly accessible databases;
- (c) Any other information that the committee is able to gather and compile and that is required to complete the sections of the regional environmental management plan template and its minimum requirements.

The expert committee should organize, with the support of the secretariat of the Authority, one or more international expert workshops in order to develop the first

draft of the regional environmental management plan. Relevant experts, stakeholders in the field (including representatives of relevant coastal States, experts with traditional knowledge and representatives of local communities) and representatives of relevant international bodies should be invited to the workshop, on the basis of an expert and stakeholder mapping exercise (conducted by or for the expert committee), in accordance with the relevant guidelines. The objective of the workshops is, inter alia, to gather all available information and to involve all relevant perspectives, interests, information and expertise.

The expert committee, facilitated by the secretariat, shall compile all available data in a specific database (for example, using the DeepData platform). The region-specific databases should be kept updated during the development and implementation of the regional environmental management plan.

Where data gaps are identified, the regional environmental management plan should be developed on the basis of proxies, applying the precautionary approach.

Consideration by the Legal and Technical Commission

The expert committee will submit its draft of the regional environmental management plan to the Legal and Technical Commission for consideration, accompanied by a statement describing the process undertaken and the stakeholders engaged in its development.

Formal stakeholder consultation

Upon receipt from the expert committee, the Legal and Technical Commission should make the draft regional environmental management plan and a summary of the information gathered (pursuant to the plan template and its minimum requirements) publicly available for at least 90 days by placing these documents on the website of the Authority, and should solicit comments from interested parties within this time frame.

The secretariat of the Authority should publish any responses received as part of the consultation on the website of the Authority.

Recommendations by the Legal and Technical Commission

After the (minimum 90-day) consultation period has closed, the Legal and Technical Commission should, at its subsequent regular meeting, consider the draft regional environmental management plan, taking into account the comments submitted during the formal stakeholder consultation and any further information from the Commission. The Commission should also satisfy itself that the proper procedure has been followed in the development of the plan, in accordance with any relevant guidelines.

The Legal and Technical Commission should either recommend that the Council adopt the regional environmental management plan or ask the expert committee to make revisions to the draft plan and/or to undertake further processes to develop or verify its contents.

Any recommendation by the Legal and Technical Commission to the Council on the adoption of a regional environmental management plan should be accompanied by a justification for that recommendation, a description of the process that has been undertaken in developing the plan, and the report of the expert committee. These documents should be made publicly accessible on the Authority's website at least three months in advance of the Council meeting during which the plan will be put forward for adoption.

Adoption of the regional environmental management plan

On the basis of a recommendation by the Legal and Technical Commission, the Council decides on the adoption of the regional environmental management plan. Should the Council not adopt the plan, it may ask the Commission to task the expert committee with making specific revisions to the plan and/or with undertaking further processes in developing or verifying its contents.

4. Review of the regional environmental management plan

Annual reporting

Every year, the expert committee, with administrative support from the secretariat, shall provide to the Council a report that summarizes new environmental data from all contractors, as well as new scientific literature data that are relevant to the regional environmental management plan and monitoring data and information. Furthermore, the committee shall provide recommendations as to the implications (if any) of new knowledge and findings for the plan.

The annual report should be made publicly accessible by the secretariat of the Authority.

If a State member of the Authority or an observer wishes to discuss the outcomes contained in an annual report, they may include the topic in the agenda of the Council at its subsequent session.

Timing

Each regional environmental management plan should undergo a review, at the latest five years after its adoption by Council, or earlier if requested by the Council.

Events that may lead the Council to request an earlier review may include:

- (a) Issue of an Authority emergency order that relates to a site within the region;
- (b) Request by another organ of the Authority;
- (c) Submission of substantial new environmental knowledge or data for the region;
- (d) A major environmental change in or affecting the region (e.g., a natural or anthropogenic disaster);
- (e) Relinquishment of areas previously under contract within the region;
- (f) Submission of a new application for a plan of work for exploitation in the region, when the exploitation would be for a new resource category in the relevant area.

Responsibility

The expert committee leads the review process (taking into account any specific instructions from the Council) and reports on the outcome to the Legal and Technical Commission.

The Legal and Technical Commission considers the review report of the expert committee to satisfy itself that the proper procedure has been followed in the review of the regional environmental management plan, in accordance with any relevant guidelines. The Commission recommends to the Council any proposed amendments regarding the plan and its contents, objectives and measures. In submitting such

recommendations to the Council, the Commission should include a rationale for its recommendations and a description of the process followed in conducting the review of the plan.

The Council reviews the amendments recommended by the Legal and Technical Commission and either adopts the revised plan or reverts the recommendations to the Commission for further work.

The Secretariat provides administrative support throughout the regional environmental management plan review process.

Consultations

Relevant persons identified through an expert and stakeholder (including relevant international bodies) mapping exercise shall be invited to provide inputs to the expert committee as part of the review process.

Upon receipt from the expert committee, the Legal and Technical Commission should make the proposed revised regional environmental management plan and a copy of the expert committee's report publicly available for 90 days on the website of the Authority, and should solicit comments from interested parties within that time frame.

Following the public consultation period, the recommendations of the Legal and Technical Commission and the revised regional environmental management plan proposed for adoption by the Council are to be made accessible on the website of the Authority at least three months in advance of the Council meeting at which the revised plan is to be put forward for adoption.



Council

Distr.: General
17 February 2020

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Item 12 of the provisional agenda*

Draft regulations for exploitation of mineral resources in the Area

Report of the Chair on the outcome of the third meeting of the open-ended working group of the Council in respect of the development and negotiation of the financial terms of a contract under article 13, paragraph 1, of annex III to the United Nations Convention on the Law of the Sea and section 8 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

I. Introduction and background

1. During the second part of the twenty-fifth session of the International Seabed Authority, the Council welcomed the progress made by the open-ended working group in advancing discussions on an appropriate system and rates of payment to the Authority for minerals recovered from the Area during exploitation, but recognized that further work still needed to be done in order to develop clear recommendations. It therefore requested the working group to convene a third meeting immediately prior to the next meeting of the Council, in February 2020.

2. During the second meeting, the working group had reviewed three options for the payment mechanism and associated rates of payment, namely:

- (a) A fixed-rate ad valorem-only royalty mechanism;
- (b) A two-stage ad valorem-only royalty mechanism;
- (c) A combined ad valorem royalty and profit-based system.

3. In preparation for the third meeting of the working group, the secretariat was requested to further refine the model to include a progressive ad valorem royalty system. It was also agreed that, to the extent possible, the third meeting would begin work on other mineral resources than polymetallic nodules.

* ISBA/26/C/L.1.



4. The third meeting of the working group was held on 13 and 14 February 2020, prior to the first part of the twenty-sixth session, and was open to all stakeholders. However, it may be noted that most developing States were absent for that particular meeting. On 13 February, the agenda for the meeting was adopted with no amendment.¹

II. Review of options

5. With a view to assisting in the creation of a review of the options for the payment mechanism, Richard Roth and Randolph Kirchain from the Massachusetts Institute of Technology made a presentation on the refined model, which included a progressive ad valorem royalty mechanism.

6. The Chair invited delegations to focus on the consideration of the four options in the model with a view to narrowing down the number of options under consideration and recommending one or two options to the Council, noting that the possible refinement of the assumptions used for the model would be considered at a later stage.

7. Participants expressed their thanks for a clear and comprehensive presentation by the Massachusetts Institute of Technology. Some delegations expressed the view that the four options should be further considered. Several delegations expressed support for both a two-stage fixed ad valorem mechanism and a two-stage progressive ad valorem mechanism around which to pursue discussion. Noting the complexity and administrative costs associated with a profit-based system, some delegations did not find it appropriate to continue the consideration of a profit element in the model. Those that favoured an ad valorem mechanism, either fixed or progressive, noted that it would meet the requirements of the United Nations Convention on the Law of the Sea and the Part XI Agreement, including for the system of payments to be fair to both contractors and the Authority. It was also noted that it would be simpler to implement, leading to lower administrative and compliance monitoring and auditing costs, and would be more transparent, making compliance monitoring easier. A suggestion was made, however, that maximum and minimum rates should be included in such a system. For the various options, the need to bear in mind the staffing requirements and monitoring costs for the Authority was highlighted. The goal of maximizing revenue to the Authority seemed to be widely accepted, while at the same time understanding that it was not the Authority's role to engage in risk-sharing ventures, but instead to administer the common heritage of mankind, in accordance with article 157 of the Convention.

8. Comments were made regarding some aspects and assumptions of the model, and the need for further details was highlighted. In particular, it was noted that the model did not adequately take into account external aspects, including environmental aspects, and that some of the fundamental assumptions of the model needed to be reviewed, in particular with regard to nodule abundance and collector number, width and speed. Comments were also expressed about linking royalties to metal prices, and suggestions were made about exploring other values, including the volume and weight of production, sponsoring States' fees and corporate income tax. Some delegations

¹ To assist participants in the discussions of the third meeting, the following documents were prepared and made available on the website of the Authority: the provisional agenda, the indicative programme of work, a revised financial model, a briefing note from the Chair of the open-ended working group and presentations on the financial payment system by Richard Roth and Randolph Kirchain. By way of further background, reference was made to the briefing note prepared by the Chair for the second meeting of the working group and to the report by the Massachusetts Institute of Technology (<https://ran-s3.s3.amazonaws.com/isa.org/jm/s3fs-public/files/documents/paysysmodel-3jun.pdf>).

suggested that concrete price forecasts should be used for modelling purposes. The need was also stressed for a more precise definition of the calculation method to assess the value of a given production volume and its respective percentage. Concerns were also expressed with the underlying method of fine-tuning the rates of the payment regime to ensure post-tax profits were high enough to motivate investment in deep-sea mining.

9. With regard to the policy objective of the Convention and the Part XI Agreement,² and without prejudice to the future financial model to be adopted, several delegations recognized the benefit in establishing an updated comparative analysis of seabed mining and land-based mining before a next meeting. This could include the identification of:

- (a) The royalty rates;
- (b) The taxable base in those jurisdictions representing the bulk of production for the same or similar minerals and/or ores, e.g., manganese, copper, cobalt and nickel;
- (c) Any environmental levies;
- (d) Any administrative fees.

10. This work could identify the average royalty rate(s) and methodology to determine a taxable base, that would neither advantage nor disadvantage Authority contractors in relation to land-based producers. It could also consider the corporate income tax regimes of those major land-based producer jurisdictions, compared with those of sponsoring States and other States that would be involved in the entire value chain of Authority contractors.

III. Environmental aspects of the model

11. With regard to the environmental aspects of the model, some delegations expressed the need to revisit the 1 per cent benchmark for contractors to pay as contributions to an environmental compensation fund. The Secretary-General informed the working group that the secretariat had issued calls for proposals for consultancies to undertake studies on an environmental compensation fund and an environmental performance guarantee. It was noted that consideration of aspects of the fund not related to the financial model was beyond the current scope of the working group.

12. The working group agreed to revert to the consideration of the environmental aspects of the financial model once further information was available.

IV. Other mineral resources: economic modelling and timing

13. To assist discussions on the consideration of financial models for other mineral resources, Mr. Roth made a second presentation on the applicability of the model for polymetallic nodules to the other mineral resources in the Area, namely, polymetallic sulphides and cobalt-rich ferromanganese crusts. This was based on the assumption that the cash-flow value structure currently used for nodules could readily be adapted to other minerals, bearing in mind however that the specific costs and revenues associated with the retrieval of different resources may vary. A number of delegations shared the view that the development of a payment regime for other minerals was premature, including in the light of technological challenges and the fact that a true estimate could only be obtained using accurate geological information and there was

² Part XI Agreement, annex, section 8, item (1)(b).

still limited knowledge concerning the composition and metal concentration of the other two minerals, in particular polymetallic sulphides.

14. The working group agreed that the focus of its work should be on polymetallic nodules, at this stage, pending further studies on the other types of resources.

V. Recommendations

15. The open-ended working group recommended that the Council:

(a) Convene a fourth meeting of the working group, preferably before the second part of the session of the Council, in order to further advance work on the payment mechanism for polymetallic nodules as a priority;

(b) Invite all stakeholders to submit comments to the secretariat, by 23 March 2020, for the purpose of further refining the assumptions of the model;

(c) While recognizing that the working group did not fully endorse nor discard any of the options, request the secretariat to prepare a report in order to refine further the two-stage fixed ad valorem royalty mechanism and the two-stage progressive ad valorem royalty mechanism, including taking into account any comments submitted pursuant to paragraph 15 (b) above, and other information as appropriate, for consideration at the following meeting of the working group;

(d) Request the secretariat to prepare a comparative study, as reflected in paragraph 9 above;

(e) Request the secretariat to make the documentation that is to be considered at a next meeting of the working group available on the Authority's website at least 14 days before the first day of the next meeting.



Council

Distr.: General
20 February 2020

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Agenda item 6

**Issues relating to the election in 2021 of members of the
Legal and Technical Commission**

Decision of the Council of the International Seabed Authority relating to the election in 2021 of members of the Legal and Technical Commission

The Council of the International Seabed Authority,

Considering the matter of the election of members of the Legal and Technical Commission for the period 2022–2026,

Understanding the increase in complexity of the matter of the election of members of the Commission,

Taking into account the efforts of the informal working group to find a solution on a process to govern the election of members of the Commission,

Understanding the need for further discussion on this matter in order to achieve a sustainable result,

Desiring to continue the work of the Council of the International Seabed Authority in a constructive manner,

1. *Requests* the Secretary-General to seek the views of the Legal and Technical Commission regarding its assessment of the current and future needs for specific areas of expertise at the next meeting of the Commission and to prepare a report for consideration of the Council of the International Seabed Authority at its next meeting in July 2020;

2. *Decides* to further discuss the process governing the elections of members of the Commission on the basis of the working paper, as an annex and integral part of the present decision, presented to the Council on 20 February 2020 by the Facilitator of the above-mentioned informal working group as the starting point to reach a consensus on this matter;

3. *Also decides* that the question of the composition of the Commission shall be considered as a matter of priority at the next meeting of the Council, with a view to taking a decision at that meeting.

263rd meeting
20 February 2020

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Annex

Working paper of the Facilitator on the election in 2021 of members of the Legal and Technical Commission

Taking into account the opinions expressed, I propose the following as a basis for further discussion of the matter of the election of members of the Legal and Technical Commission:

1. The overall number of members of the Commission should not be less than 25, as indicated in the decision of the Council contained in document [ISBA/22/C/29](#), but should not exceed its current membership of 30.

2. The Council requests the Secretary-General to seek the views of the Commission regarding its assessment of the current and future needs for specific areas of expertise (mineral resources, oceanology, marine environment, economy, legal matters, etc.) in the composition of the Commission and provide clear guidance on such composition at the earliest possibility in order to facilitate the discussion of the appropriate qualifications of candidates.

3. The Council elaborates a clear mechanism for the election of members of the Commission on the basis of:

(a) Equitable geographical distribution and the representation of special interests, in accordance with the relevant applicable provisions, including article 163, paragraphs 3 and 4, and article 165 of the United Nations Convention on the Law of the Sea,¹ the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982,² and rules 78 and 81 of the rules of procedure of the Council;

(b) Existing practices applicable in the selection of members of various United Nations bodies, including technical and expert bodies;

(c) Assessment of the need for specific areas of expertise by the Commission, as referred to in paragraph 2 above.

4. The Facilitator shall provide a first draft of that mechanism by the end of March 2020 in order to enable the possibility of intersessional work that would be organized by means of exchanging written comments and proposals to be sent by email to the Secretariat. Thereafter, the Facilitator will analyse them and provide an amended draft which will be distributed by the Secretariat. The Facilitator will amend the text in three weeks. The deadline for submitting comments is also three weeks.

5. A decision on the mechanism to govern the elections of members of the Commission shall be adopted during the second part of the twenty-sixth session of the Council in July 2020.

¹ United Nations, *Treaty Series*, vol. 1833, No. 31363.

² United Nations, *Treaty Series*, vol. 1836, No. 31364.



Council

Distr.: General
21 February 2020

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Agenda item 12

Decision of the Council concerning a standardized approach for the development, approval and review of regional environmental management plans in the Area

The Council of the International Seabed Authority,

Recognizing the need for a standardized approach for the development, approval and review of regional environmental management plans in the Area,

Having considered the proposals on a procedure for the development, approval and review of regional environmental management plans,¹ and on a template with minimum requirements for regional environmental management plans,²

1. *Requests* the Legal and Technical Commission, in consultation with the Finance Committee if necessary, to further develop the “Guidance to facilitate the development of regional environmental management plans”,³ in accordance with the United Nations Convention on the Law of the Sea,⁴ the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982,⁵ as well as the rules, regulations and procedures of the International Seabed Authority, and taking into account, as appropriate, the above-mentioned proposals^{1,2} with a view to recommending to the Council a standardized approach, including a template with indicative elements;

2. *Requests* the Legal and Technical Commission to report on the progress made in its work on this issue at the next meeting of the Council, in July 2020.

*264th meeting
21 February 2020*

¹ ISBA/26/C/6.

² ISBA/26/C/7.

³ Prepared by the Secretariat and available at: https://ran-s3.s3.amazonaws.com/isa.org/jm/s3fs-public/files/documents/rem_p_guidance_.pdf.

⁴ United Nations, *Treaty Series*, vol. 1833, No. 31363.

⁵ *Ibid.*, vol. 1836, No. 31364.





Council

Distr.: General
21 February 2020

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Agenda item 12

Decision of the Council concerning working methods to advance discussions on the draft regulations for exploitation of mineral resources in the Area

The Council of the International Seabed Authority,

Recognizing the need to advance discussions on the draft regulations for exploitation of mineral resources in the Area,

Conscious of the need to strengthen the working methods to facilitate progress to that end,

1. *Decides* to establish three informal working groups, with the mandate and working modalities set out in the annex to the present decision;
2. *Also decides* to appoint the individuals to be designated by the regional groups in accordance with those modalities as facilitators;
3. *Further decides* that the facilitators shall exercise their functions in accordance with the mandate set out in the annex to the present decision;
4. *Requests* the facilitators to report on the progress in their work during the next meeting of the Council, in July 2020.

*264th meeting
21 February 2020*



Annex

Informal working groups to advance discussions on the draft regulations for exploitation of mineral resources in the Area

I. Mandate and working modalities of the informal working groups

1. Three informal working groups will be established, initially, to advance discussions on the draft regulations for exploitation of mineral resources in the Area, as follows:
 - (a) An informal working group on protection and preservation of the marine environment;
 - (b) An informal working group on inspection, compliance and enforcement;
 - (c) An informal working group on institutional matters (including the role and responsibilities of the various organs of the International Seabed Authority, timelines, recourse to independent expertise, and stakeholder participation).
2. The informal working groups will be open to observers and other stakeholders and shall be held in public unless otherwise decided.
3. All the informal working groups will meet during sessions of the Council and no meetings will be held in parallel.

II. Mandate of the facilitators

1. The regional groups¹ responsible for the facilitation of each informal working group will nominate an individual to act as facilitator.
2. Each facilitator would commit to holding that position beyond the current session to provide for continuity, and need not necessarily be the head of delegation.
3. The facilitators will moderate the discussions held during Council sessions and, as necessary, use best efforts to communicate with participants in their respective informal working group through electronic means during the intersessional period.
4. The facilitators will be kept informed of any workshops that may be relevant to the draft regulations related to their mandate.
5. The task of the facilitators will be to identify and build consensus.
6. The facilitators will apply an inclusive approach, including by reaching out to members of the Council, other States members of the Authority, the Special Representative of the Secretary-General of the International Seabed Authority for the Enterprise, observers and other stakeholders to ensure that all views are taken into account, as appropriate.
7. The facilitators will provide guidance to the Secretariat in compiling comments on the draft text, with a view to preparing a revised text, under their responsibility, for consideration by the Council.

¹ Noting that the Chair of the open-ended informal working group of the Council in respect of the development and negotiation of the financial terms of a contract under article 13, paragraph 1 of annex III to the United Nations Convention on the Law of the Sea and under section 8 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, is from the Western European and other States.

8. The facilitators will report on the work of their respective informal working group to the plenary of the Council.
 9. The facilitators will consult regularly with each other and the Secretariat to align the methods of work in each of the informal working groups.
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Council

Distr.: Limited
27 January 2020

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Item 6 of the provisional agenda*

Issues relating to the election in 2021 of members of the Legal and Technical Commission

Submitted on behalf of Australia, Canada, France, Germany, Italy, Norway, Spain and the United Kingdom of Great Britain and Northern Ireland

Proposal to amend draft decision [ISBA/25/C/L.2](#) of the Council of the International Seabed Authority relating to the election of members of the Legal and Technical Commission

The Council of the International Seabed Authority,

Recalling its decision [ISBA/22/C/29](#) of 22 July 2016, in particular paragraph 2,

Considering the increase in complexity of the matter of the election of members of the Legal and Technical Commission,

Recalling article 163, paragraphs 3 and 4, of the United Nations Convention on the Law of the Sea, which provides that members of the Commission shall have appropriate qualifications in the area of competence of the Commission; that States parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the Commission; and that, in the election of members of the Commission, due account shall be taken of the need for equitable geographical distribution and the representation of special interests,

Also recalling article 163, paragraph 8 of the Convention, which provides that members of the Commission shall have no financial interest in any activity relating to exploration and exploitation in the Area,

Further recalling that in accordance with article 165, paragraph 1, of the Convention, members of the Commission shall have appropriate qualifications; and the Council shall endeavour to ensure that the membership of the Commission reflects all appropriate qualifications,

Desiring to establish more clarity in the process of future elections of members of the Commission,

* [ISBA/26/C/L.1](#).



1. *Takes note* of the report of the Secretary-General on the election of members of the Legal and Technical Commission;¹
2. *Confirms* that appropriate qualifications in relevant fields of expertise, equitable geographical representation, and representation of special interests, shall guide the process of election of members of the Commission;
3. *Requests* that the Secretary-General provide, in consultation with the Commission and no later than 15 months before an election, a report for consideration by the Council of the International Seabed Authority identifying the ideal size of the next Commission to be elected and the composition of the expertise among its members;
4. *Decides* that any future change in the size and composition of the Commission shall be determined by the Council no later than one year before the election after consideration of the report requested in paragraph 3 above and taking into account paragraph 2 above;
5. *Emphasizes* that States Parties shall take into account the considerations set out in the third preambular paragraph of the present decision.

¹ ISBA/23/C/2.



Council

Distr.: General
26 March 2020

Original: English

Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

Statement by the President of the Council on the work of the Council during the first part of the twenty-sixth session

I. Opening of the session

1. The first part of the twenty-sixth session of the Council took place from 17 to 21 February 2020.

II. Adoption of the agenda

2. At its 259th meeting, on 17 February 2020, the Council adopted the agenda for its twenty-sixth session ([ISBA/26/C/1](#)).

III. Election of the President and Vice-Presidents of the Council

3. At the same meeting, following consultations among the regional groups, the Council elected the representatives of Nigeria (African States), the Russian Federation (Eastern European States), Jamaica (Latin American and Caribbean States) and Canada (Western European and other States) as Vice-Presidents. Subsequently, the Council elected Taaniela Kula (Tonga) as President of the Council for the twenty-sixth session.

4. On 19 February 2020, the President announced that he had to cease to hold office. Pursuant to rule 24(2) of the rules of procedure of the Council, one of the Vice-Presidents, Kathy-Ann Brown (Jamaica), was designated by the Bureau to act in his place until the election of a new President.

IV. Report of the Secretary-General on the credentials of members of the Council

5. At the 263rd meeting, on 20 February 2020, the Secretary-General indicated that, as at that date, credentials had been received from 33 members of the Council. It was noted that, in accordance with the system agreed upon for the allocation of



seats among the regional groups at the first session of the Council, the Asia-Pacific Group had designated Tonga to participate in the meetings of the Council without the right to vote during the twenty-sixth session. It would be the turn of the Latin American and Caribbean Group to relinquish a seat on the Council in 2021.

V. Issues relating to the election in 2021 of members of the Legal and Technical Commission

6. As requested at its 258th meeting, on 19 July 2019, the Council reverted to the issue of the elections of members of the Legal and Technical Commission as a matter of priority at its 259th and 260th meetings, on 17 February 2020. The Council considered two proposals: the draft decision of the Council relating to the election of members of the Commission, submitted by Algeria, on behalf of the African Group, and by Brazil, on behalf of the Latin American and Caribbean States Group (ISBA/25/C/L.2), and the proposal to amend draft decision ISBA/25/C/L.2 of the Council relating to the election of members of the Commission, submitted by Australia, Canada, France, Germany, Italy, Norway, Spain and the United Kingdom of Great Britain and Northern Ireland (ISBA/26/C/L.2).

7. Although several delegations underlined that there were many commonalities in the two proposals before the Council, neither proposal attracted a consensus. On 17, 18 and 19 February, the Council convened in an informal setting in order to find a compromise on the optimum composition and size of the Commission, with the appropriate range of expertise, taking into account equitable geographical distribution and representation of special interests. The Council tasked one of the Vice-Presidents, Vladislav Kurbatskiy (Russian Federation), with facilitating informal consultations for the purpose of preparing a draft decision that would sufficiently reflect the views of the whole membership of the Council for consideration and adoption by consensus.

8. The discussions focused on the size and composition of the Commission and ensuring that the issues of equitable geographical distribution and expertise were treated equally. Several delegations emphasized that the necessary expertise could be found in all regions. Delegations also noted that the text needed to be consistent with the relevant provisions of the United Nations Convention on the Law of the Sea. In this respect, it emerged that for the next election in 2021, the process governing the election of members of the Commission would be informed by the assessment of the present and future needs of the Commission.

9. On 20 February 2020, the facilitator, Mr. Kurbatskiy, presented a working paper in which he proposed to work on a formula on the basis of the following elements:

(a) Overall number of members of the Commission should not exceed the current membership of 30 or be less than 25;

(b) Assessment of the current and future areas of expertise necessary for the proper functioning of the Commission;

(c) Equitable geographical distribution and the representation of special interests in accordance with the relevant applicable provisions of the Convention;

(d) Existing practices applicable in the selection of members of various United Nations bodies, including technical and expert bodies.

10. At its 263rd meeting, on 20 February 2020, the Council adopted a decision relating to the election in 2021 of members of the Commission (ISBA/26/C/9). The Council decided to consider the question of the composition of the Commission as a matter of priority at the next meeting of the Council, with a view to taking a decision on a mechanism to govern the election of members of the Commission.

VI. Election to fill a vacancy on the Legal and Technical Commission

11. At its 260th meeting, the Council elected Carsten Rühlemann (Germany) to fill the vacancy on the Legal and Technical Commission resulting from the resignation of Christian Jürgen Reichert (Germany), for the remainder of his term until 31 December 2021 (see [ISBA/26/C/5](#)).

VII. Report of the Secretary-General on the status of contracts for exploration and related matters

12. At its 260th meeting, the Council took note of the report of the Secretary-General on the status of contracts for exploration and related matters, including information on the periodic review of the implementation of approved plans of work for exploration ([ISBA/26/C/4](#)), including the proposed development of guidance for contractors on the content, format and structure of periodic reports.

VIII. Report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission

13. At its 260th meeting, the Council took note of the report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission ([ISBA/26/C/3](#)). With regard to progress on the development of standards and guidelines, the Secretary-General informed the Council that a considerable amount of work had been carried out and the output would be reviewed by the Commission in accordance with the process and schedule proposed by the Commission (see [ISBA/25/C/19/Add.1](#)) and taken note of by the Council in July 2019. Delegations recognized the importance of the work led by the Commission on the development of standards and guidelines and said it was essential that such standards and guidelines be developed as part of a package, along with the draft regulations on the exploitation of mineral resources in the Area, with the necessary standards and guidelines developed before the adoption of the draft regulations. Some delegations cautioned against sacrificing quality for speed and emphasized the need to advance such work and the development of environmental goals, objectives and principles in a transparent manner.

14. Some delegations welcomed the progress made in the review and development of regional environmental management plans in the Clarion-Clipperton Fracture Zone and northern Mid-Atlantic Ridge and emphasized the need for such plans to be developed in other priority regions, such as the Indian Ocean.

IX. Draft regulations on the exploitation of mineral resources in the Area

15. From 17 to 21 February 2020, the Council resumed its consideration of the draft regulations on the exploitation of mineral resources in the Area ([ISBA/25/C/WP.1](#)). The Council had the benefit of comments on the draft regulations submitted by members of the Council and other States members of the International Seabed Authority, observers and stakeholders in response to the invitation issued by the Council at its twenty-fifth session ([ISBA/25/C/37](#)); a note by the secretariat on

comments on the draft regulations, which provides a broad overview of the main issues raised in the written submissions and an overview of general points arising from specific regulatory provisions (ISBA/26/C/2); and a collation of specific drafting suggestions made by members of the Council (ISBA/26/C/CRP.1).¹

A. Resumed substantive consideration of the draft regulations on the exploitation of mineral resources in the Area

16. From 18 to 21 February 2020, the Council convened in an informal setting to resume its consideration of the draft regulations on the exploitation of mineral resources in the Area (ISBA/25/C/WP.1). The Council considered parts IV, V and VI and their related annexes IV, VII and VIII.

B. Progress regarding the development and negotiation of the financial terms of a contract

17. At the 261st meeting, on 17 February 2020, the Council received the report of the Chair on the outcome of the third meeting of the open-ended working group of the Council in respect of the development and negotiation of the financial terms of a contract (ISBA/26/C/8).

18. At the 262nd meeting, on 18 February 2020, some delegations expressed the view that the financial model should include assumptions concerning metal prices, contractor costs and revenues, sponsoring State fees and corporate income tax. The importance of ensuring that there is sufficient transparency in the relationship between contractors and sponsoring States and of including environmental parameters when reviewing the model was also emphasized. It was recalled that the system should be fair to both the Authority and the contractors. Delegations agreed that no option for a payment system should be ruled out at that stage.

19. The Council decided to convene a fourth meeting of the open-ended working group of the Council in advance of the second part of the twenty-sixth session of the Council in order to further advance work on the payment mechanism for polymetallic nodules as a priority. The Council also invited all stakeholders to submit comments to the secretariat by 23 March 2020, for the purpose of further refining the assumptions of the model. While recognizing that the working group had not fully endorsed or discarded any of the four options for the payment mechanism, the Council requested the secretariat to prepare a report in order to refine further the two-stage fixed ad valorem royalty mechanism and the two-stage progressive ad valorem royalty mechanism, including taking into account any comments submitted by stakeholders by 23 March. The Council also requested the secretariat to prepare a comparative study of seabed mining and land-based mining with regard to the policy objective contained in section 8, item (1)(b), of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The Council requested the secretariat to make the documentation to be considered at the next meeting of the working group available on the Authority's website at least 14 days before the first day of the next meeting. The Council emphasized the need for broad participation of the member States of the Authority in the fourth meeting and recalled that it had agreed to the use of the voluntary trust fund to support the participation of members of the Council from developing countries for that purpose.

¹ Available at www.isa.org.jm/document/isba26ccrp1.

C. Working modalities

20. At its 262nd meeting, the Council discussed a working method to advance the consideration of the draft regulations. While some delegations expressed support for the establishment of additional informal working groups focusing on thematic and complex questions, others raised concerns over timing and potential parallel meetings of such working groups. Concerns were also expressed about proposals that intersessional meetings of such working groups could be convened or that meetings could be held away from the headquarters of the Authority. It was generally agreed that the informal working groups should make full use of the time and meeting services available during the Council's meetings and that parallel and intersessional meetings should be avoided.

21. On 20 February 2020, the Council appointed one of the Vice-Presidents, Kenneth Wong (Canada), to facilitate informal consultations on the working modalities related to the draft regulations.

22. At the 264th meeting, on 21 February, on the basis of the informal consultations, the facilitator presented a working paper to the Council containing proposed working modalities to advance the consideration of the draft regulations. The Council adopted the proposed working modalities and, in addition to the open-ended working group of the Council in respect of the development and negotiation of the financial terms of a contract, the Council agreed to establish the following three informal working groups on thematic issues, each to be led by a facilitator:

(a) Informal working group on the protection and preservation of the marine environment;

(b) Informal working group on inspection, compliance and enforcement;

(c) Informal working group on institutional matters (including the role and responsibilities of the various organs of the Authority, timelines, recourse to independent expertise and stakeholder participation).

Liability issues were not considered to be ripe for consideration in the context of an informal working group as the Legal and Technical Commission was currently seized of the matter.

23. The annex to the decision of the Council concerning working methods to advance discussions on the draft regulations ([ISBA/26/C/11](#)) details the mandate and working modalities of the informal working groups and the role of the facilitators. The Council requested the facilitators to report on progress in their work at the next meeting of the Council in July 2020.

24. The Acting President recalled that the open-ended working group of the Council in respect of the development and negotiation of the financial terms of a contract was chaired by a member of the Western European and other States Group. The African Group appointed Janet Omoleegho Olisa (Nigeria) as the facilitator of the informal working group on inspection, compliance and enforcement. The Council agreed that the Asia-Pacific Group would nominate a facilitator for the informal working group on the protection and preservation of the marine environment, while the facilitator of the informal working group on institutional matters would be appointed by the Latin American and Caribbean Group. It was agreed that the Asia-Pacific Group and the Latin American and Caribbean Group would communicate their nominations to the secretariat at their earliest convenience and that the Bureau would work with the secretariat to ensure that the facilitators were fully briefed in preparation for the second part of the twenty-sixth session of the Council in July 2020. The Council noted that a member of the Eastern European Group had already been appointed to facilitate

work on the question of the election of the members of the Legal and Technical Commission and therefore the Group had indicated that it would not put forward a facilitator for the informal working groups.

D. Regional environmental management plans

25. On 19 February 2020, in the context of part IV of the draft regulations, the Council considered a proposal on a procedure for the development, approval and review of regional environmental management plans (ISBA/26/C/6) and a proposal for a template with minimum requirements for regional environmental management plans (ISBA/26/C/7), both of which had been submitted by the delegations of Germany and the Netherlands, with co-sponsorship by Costa Rica. The general views on the matter coincided with the desirability of working towards the standardization of the approach to the development of regional environmental management plans. A delegation suggested that such plans should be legally binding. Some delegations appreciated the importance of developing the plans and said that any suggested technical working groups should be informal and ad hoc and that no formal bodies should be established. A number of delegations emphasized the importance of ensuring that both proposals were considered in conjunction with the existing work being carried out under the draft regulations as well as under the auspices of the Legal and Technical Commission in accordance with its mandate under the Convention. Delegations raised questions about the specifics of how the technical working groups would function and suggested that the cost implications of establishing such groups be considered by the Finance Committee. Delegations were hesitant about the Council adopting the approach described in the two proposals, on the basis that the creation of a body of experts external to the Legal and Technical Commission could raise problems. Reference was also made to the Commission's current review into improving its processes for the development of regional environmental management plans on the basis of a guidance document prepared by the secretariat, and it was noted that the Commission's processes were similar to the process outlined in the two proposals. The importance of the Council having a greater supervisory role in this respect was also emphasized.

26. At the 264th meeting, on 21 February 2020, following further discussions in an informal setting, the Council adopted a decision concerning a standardized approach for the development, approval and review of regional environmental management plans in the Area (ISBA/26/C/10). The Council requested the Legal and Technical Commission, in consultation with the Finance Committee if necessary, to further develop the guidance to facilitate the development of regional environmental management plans, in accordance with the Convention, the Agreement and the rules, regulations and procedures of the International Seabed Authority, and taking into account, as appropriate, the two above-mentioned proposals (ISBA/26/C/6 and ISBA/26/C/7), with a view to recommending to the Council a standardized approach, including a template with indicative elements. The Council also requested the Commission to report on the progress made in its work on this issue at the next meeting of the Council, in July 2020.

Proposal to amend draft decision (ISBA/25/C/L.2) of the Council of the International Seabed Authority relating to the election of members of the Legal and Technical Commission

The Council of the International Seabed Authority,

Recalling its decision ISBA/22/C/29 of 22 July 2016, in particular paragraph 2,

Considering the increase in complexity of the matter of the election of members of the Legal and Technical Commission,

Recalling article 163, paragraphs 3 and 4, of the United Nations Convention on the Law of the Sea, which provides that members of the Commission shall have appropriate qualifications in the area of competence of the Commission; that States Parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the Commission; and that, in the election of members of the Commission, due account shall be taken of the need for equitable geographical distribution and the representation of special interests,

Also recalling article 163, paragraph 8 of the United Nations Convention on the Law of the Sea, which provides that members of the Commission shall have no financial interest in any activity relating to exploration and exploitation in the Area,

Further recalling that in accordance with article 165, paragraph 1, members of the Commission shall have appropriate qualifications; and the Council shall endeavour to ensure that the membership of the Commission reflects all appropriate qualifications,

Desiring to establish more clarity in the process of future elections of members of the Commission,

1. Takes note of the report of the Secretary-General on the election of members of the Legal and Technical Commission;¹

2. Confirms that appropriate qualifications in relevant fields of expertise, equitable geographical representation, and representation of special interests, shall guide the process of election of members of the Commission;

3. Requests that the Secretary-General provide, in consultation with the Commission and no later than 15 months before an election, a report for consideration by the Council of the International Seabed Authority, identifying the ideal size of the next Commission to be elected and the composition of the expertise among its members;

4. Decides that any future change in the size and composition of the Commission shall be determined by the Council no later than one year before the election, after considered the report requested in paragraph 3 above and taking into account

Excluído: In pursuit of

Excluído: ing

Excluído: certainty

Excluído: Decides

Excluído: as well as

Excluído: and appropriate fields of expertise

Excluído: 3

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Excluído: should

Excluído: ,

¹ ISBA/23/C/2

paragraph 2 above;

5. *Emphasises that States Parties shall* take into account the considerations set out in the third preambular paragraph of the present decision.

Excluido: 4. *Further decides* that the number of vacancies allotted to each regional group at the next election shall be determined in the light of equitable geographical representation;¶

Excluido: *Calls upon* regional groups

Excluido: to

Twenty-sixth session

Council session, part I

Kingston, 17-21 February 2020

Item 12 of the provisional agenda*

Draft regulations for exploitation of mineral resources in the Area

Draft regulations on exploitation of mineral resources in the Area

Collation of specific drafting suggestions by members of the Council

Prepared by the Secretariat

1. The present document provides a collation of the specific drafting suggestions made by members of the Council¹ and sent to the Secretariat following the invitation of the Council during the second part of the twenty-sixth session of the Authority (ISBA/25/C/37). It should be read in conjunction with the compilations of submissions posted on the website of the Authority, which also contain general comments and observations.²
2. The drafting suggestions are reflected as marked-up text in the revised version of the draft regulations on exploitation of mineral resources in the Area prepared by the Legal and Technical Commission and dated 22 March 2019 (ISBA/25/C/WP.1).
3. The following convention is used for the mark ups:
 - a) Suggested additions to provisions are marked in **underlined bold**
 - b) Suggested deletions of existing text are marked with [bold square brackets]
 - c) Suggested alternative drafting to existing text is marked as [bolded text in bold square brackets]
 - d) The use of “Alt” without square brackets indicates an alternative to an entire regulation, paragraph or sub-paragraph
4. The drafting suggestions are reflected as provided, without editorial intervention from the secretariat other than in relation to the capitalization of certain terms based on the convention used in the draft regulations and the Authority’s editorial practice.
5. It is understood that the reflection of a drafting suggestion in the present document is without prejudice to the future negotiation of that suggestion by the Council.

¹ This includes those States members of the Council in 2019 and those which will become members in 2020.

² <https://www.isa.org.jm/legal-instruments/ongoing-development-regulations-exploitation-mineral-resources-area>.

Draft regulations on exploitation of mineral resources in the Area (ISBA/25/C/WP.1)

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Preamble

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”),

Reaffirming the fundamental importance of the principle that the Area and its resources are the common heritage of mankind,

Emphasizing that the exploitation of the resources of the Area shall be carried out for the benefit of mankind as a whole, on whose behalf the International Seabed Authority acts, in accordance with Part XI of the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Agreement”),

Emphasizing the importance of ensuring effective protection for the Marine Environment from harmful effects which may arise from activities in the Area consistent with article 145 of the Convention,

Considering that the objective of these regulations is to provide for the exploitation of the resources of the Area consistent with the Convention and the Agreement, **while ensuring effective protection for the Marine Environment from harmful effects caused by Exploitation activities,**

Taking into account the Sustainable Development Goals and Targets of the 2030 Agenda, as adopted by the General Assembly of the United Nations in September 2015 (resolution 70/1),

Part I Introduction

Regulation 1 Use of terms and scope

1. Terms used in these regulations shall have the same meaning as those in the rules of the Authority.

1alt1. Terms used in the Convention shall have the same meaning in these regulations.

1alt2. Terms used in these regulations shall have the same meaning as those in the Convention.

1alt3. Terms used in these regulations shall have the same meaning as those in the Convention, the Agreement, as well as in rules, regulations and procedures of the Authority.

2. In accordance with the Agreement, the provisions of the Agreement and part XI of the Convention shall be interpreted and applied together as a single instrument. These regulations and references in these regulations to the Convention are to be interpreted and applied accordingly.

3. Terms and phrases used in these regulations are defined for the purposes of these regulations in the schedule.

4. These regulations shall not in any way affect the freedom of scientific research, pursuant to article 87 of the Convention, or the right to conduct marine scientific research in the Area pursuant to articles 143 and 256 of the Convention. Nothing in these regulations shall be construed in such a way as to restrict the

exercise by States of the freedom of the high seas as reflected in article 87 of the Convention.

4alt. Nothing in these Regulations shall prejudice the rights, jurisdiction and duties of States under the Convention. These Regulations shall be interpreted and applied in the context of and in a manner consistent with the Convention.

[5. These regulations are [supplemented] **accompanied** by Standards and Guidelines, as referred to in these regulations and the annexes thereto, as well as by further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment. **Standards form an integral part of these regulations and any reference to the regulations includes the Standards that form part of these.**]

6. The annexes, appendices and schedule to these regulations form an integral part of the regulations and any reference to the regulations includes the annexes, appendixes and schedule thereto.

7. These regulations are subject to the provisions of the Convention and the Agreement and other rules of international law not incompatible with the Convention.

Regulation 2

Fundamental policies and principles

Alt1. Fundamental principles

Alt2. Fundamental policies, principles and approaches

Alt3. Fundamental policies and guiding principles

In furtherance of and consistent with Part XI of the Convention and the Agreement, the fundamental policies [and] [,] principles **and approaches** of these regulations are, inter alia, to:

(a) Recognize that the rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;

(a)bis Recognize the need to ensure public trust, regulatory integrity, and the need to avoid any perceived or actual conflicts of interest;

(b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring:

(i) The development of the resources of the Area;

(ii) Orderly, safe and rational management of the resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of **precaution and** conservation, the avoidance of unnecessary waste;

(iii) The expansion of opportunities for participation in such activities consistent, in particular, with articles 144 and 148 of the Convention;

(iv) Participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in the Convention and the Agreement;

(v) Increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals;

(vi) The promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand;

(vii) The enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of monopolization of activities in the Area;

(viii) The protection of developing countries from serious adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area;

(ix) The development of the common heritage for the benefit of mankind as a whole; **[and]**

(x) That conditions of access to markets for the imports of minerals produced from the resources of the Area and for imports of commodities produced from such minerals shall not be more favourable than the most favourable applied to imports from other sources **[.]; and]**

(xi) The effective implementation of the Sustainable Development Goals and Targets of the 2030 Agenda, as adopted by the General Assembly of the United Nations in September 2015 (resolution 70/1).

(b)alt1. Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in accordance with the policies stated under article 150 of the Convention.

(b)alt2. Give effect to article 150 of the Convention.

(c) Ensure that the resources of the Area are exploited in accordance with sound commercial principles, and that exploitation is carried out in accordance with Good Industry Practice **while adopting sustainable and socially responsible policies;**

(c)bis Give effect to article 142 of the Convention by ensuring that activity in the Area shall be conducted with due regards to rights and legitimate interests of any coastal state across/ adjacent whose jurisdiction such deposits lie, and with a view to ensuring:

i. Consultation, including a system of prior notification to be maintained with coastal state concerned to avoiding infringement of such rights and interests;

ii. Neither the principle and policies or provisions in the regulation shall affect the rights of coastal state to take such measures consistent with relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interest from pollution or threat thereof or from hazardous occurrences resulting from or caused by any activities in the Area;

(d) Provide for the protection of human **and non-human** life and safety;

(e) Provide, pursuant to article 145 of the Convention, for the effective protection of the Marine Environment from the harmful effects which may arise from exploitation, in accordance with the Authority's environmental policy, including regional environmental management plans, based on the following principles:

(i) A fundamental consideration for the development of environmental objectives shall be the effective protection, conservation and where practicable, restoration of the Marine Environment, including biological diversity and ecological integrity;

(ii) The application of the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development;

(ii)alt. The application of the precautionary principle;

(iii) The application of an ecosystem approach;

(iv) The application of “the polluter pays” principle through market-based instruments, mechanisms and other relevant measures;

(iv)alt1. The application of “the polluter pays” principle;

(iv)alt2. The application of the polluter pays principle as contained in principle 16 of the Rio Declaration on Environment and Development;

(iv)alt3. The application of the polluter pays principle, as reflected in principle 16 of the Rio Declaration on Environment and Development, through market-based instruments, mechanisms and other relevant measures;

(iv)alt4. The application of the polluter pays principle, as reflected in principle 16 of the Rio Declaration on Environment and Development, through compensation and incentive mechanisms and other relevant measures;

(iv)alt5. The application of "the polluter pays" principle through regulatory mechanisms, including standards and guidelines, market-based instruments, and other relevant measures;

(v) Open Access to data and information relating to the protection [and preservation] [and conservation and where practicable restoration] of the Marine Environment;

(vi) Accountability and transparency in decision-making; and

(vii) [Encouragement of] [The right to] effective public participation;

(viii) Identification of areas of particular environmental interest.

(e)bis Ensure that Regional Environmental Management Plans are adopted by the Authority before Exploitation activities are permitted in the respective areas, while preventing any misuse of Regional Environmental Management Plans to block Plans of Work;

(e)ter Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment including, but not restricted to, pollution.

[(f) Provide for the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline;]

(g) Incorporate the Best Available Scientific Evidence into decision-making processes;

(h) Ensure the effective management and regulation of the Area and its resources in a way that promotes the development of the common heritage for the benefit of mankind as a whole; and

(i) Ensure that these regulations, and any decision-making thereunder, are implemented in conformity with these fundamental policies and principles.

Regulation 3

Duty to cooperate and exchange of information

In matters relating to these regulations:

(a) Members of the Authority and Contractors shall [use their best endeavours to] cooperate with the Authority to provide such data and information [as is reasonably] necessary for the Authority to discharge its duties and responsibilities under the Convention;

(a)alt. Members of the Authority and Contractors shall cooperate with the Authority to provide such data and information upon the request by the Secretary-General in writing with an explanation that such data and information is necessary for the Authority to discharge its duties and responsibilities under the Convention. This provision shall be applied to all members of the Authority and Contractors in a uniform and non-discriminatory manner;

(b) The Authority, sponsoring States and flag States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements;

(c) The Authority shall develop, implement and promote effective and transparent communication, public information and public participation procedures;

(d) The Authority shall consult and cooperate with sponsoring States, **[relevant adjacent] coastal States** flag States, competent international organizations and other relevant bodies as appropriate, to develop measures to:

(i) Promote the health and safety of life and property at sea and the protection of the Marine Environment; and

(ii) Exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards;

(e) Contractors, sponsoring States, **[relevant adjacent] coastal States** and members of the Authority shall cooperate with the Authority in the establishment and implementation of programmes to observe, measure, evaluate and analyse the impacts of exploitation on the Marine Environment, to share the findings and results of such programmes with the Authority for wider dissemination and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area;

(f) Members of the Authority and Contractors shall [use their best endeavours], in conjunction with the Authority, [to] cooperate with each other, as well as with other Contractors and national and international scientific research and technology development agencies, with a view to:

(i) Sharing, exchanging and assessing environmental data and information for the Area;

(ii) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps;

(iii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information;

- (iv) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area;
- (v) Promoting the advancement of marine scientific research in the Area for the benefit of mankind as a whole; and
- (vi) Developing incentive structures, including market-based instruments, to support [transfer of technology and capacity enhancement of developing states] and enhance the environmental performance of Contractors beyond the legal requirements, including through technology development and innovation; [and]

(f)alt. Members of the Authority and Contractors shall cooperate with each other, as well as with other Contractors and national and international scientific research and technology development agencies, with a view to sharing, exchanging and assessing environmental data and information for the Area;

(f)alt bis. Members of the Authority and Contractors shall use their best endeavours, in conjunction with the Authority to cooperate with each other, as well as with other Contractors and national and international scientific research and technology development agencies with a view to:

- (i) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps;
- (ii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information;
- (iii) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area;
- (iv) Promoting the advancement of marine scientific research in the Area for the benefit of mankind as a whole; and
- (v) Developing incentive structures, including market-based instruments, to support and enhance the environmental performance of Contractors beyond the legal requirements, including through technology development and innovation;

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall [use their best endeavours], upon the request of the Secretary-General, [to] provide or facilitate access to [such] information [as is reasonably required by the Secretary-General] [necessary] to prepare studies of the potential impact of exploitation in the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines.

(g)alt. In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall provide or facilitate access to such information upon the request by the Secretary-General in writing with an explanation that such information is necessary for the Authority to prepare studies of the potential impact of exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines. This provision shall be applied to all Contractors in a uniform and non-discriminatory manner.

(h) The Council shall, taking into account recommendations by the Commission, adopt Guidelines concerning the duties mentioned in paras. (c) to (f) which establish requirements, obligations and procedural arrangements within three years after the adoption of these regulations.

Regulation 4

Protection measures in respect of coastal States

Alt1. Rights and legitimate interests of the coastal States

Alt2. Rights of coastal States

1. Nothing in these regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention.

1bis. The Secretary-General shall inform potentially affected coastal States, as identified in the applicable Regional Environmental Management Plan, upon the submission of an application for exploitation. Appropriate consultation and notification protocols will be developed.

2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause [serious] [significant] harm to the Marine Environment, including, but not restricted to, pollution, **in areas** under the jurisdiction or sovereignty of coastal States, and that such [serious] [significant] harm or pollution arising from Incidents in their Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State. **Such measures shall include consulting with any coastal State in close proximity to a proposed exploitation area prior to submitting an application for approval of a Plan of Work. Consultations shall be maintained with any coastal State concerned with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.**

3. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause Serious Harm or a threat of Serious Harm to its coastline or to the Marine Environment under its jurisdiction or sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the Legal and Technical Commission, the Contractor and its sponsoring State or States of such notification. The Contractor and its sponsoring State or States shall be provided with a reasonable opportunity to examine the evidence, if any, and submit their observations thereon to the Secretary-General within [a reasonable time] **[24 to 72 hours]**.

3bis. The coastal States in providing the evidence of potential Serious Harm or a threat of Serious Harm to Marine Environment under its jurisdiction may submit the result of independent overview on the result of environmental impact assessment and Mitigation and respond plan of the Contractor site whose site adjacent or across to its jurisdiction.

3ter. In the event of pollution causing Serious Harm to Marine Environment and livelihood of coastal community, [relevant adjacent] coastal States which have grounds for believing that pollution is originating from activities in the Area, shall notify the Secretary-General in writing through appropriate channels of the grounds upon which such belief is based and request for prompt inspection as regulated in regulation 96.

3quater. The Secretary-General, upon request of [relevant adjacent] coastal States, shall instruct prompt inspection in which affected coastal States shall be invited to accompany the inspection, no later than 24 hours after such request

was made by affected coastal States to assess whether pollution is attributable to activities in the Area.

4. If the Commission determines, taking account of the relevant **[Guidelines]** **[Standards]**, that there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur, it shall recommend that the Council issue an emergency order **which may include an order for the suspension or adjustment of operations** pursuant to article 165 (2) (k) of the Convention. **Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with regulation 28 (3).**

5. If the Commission determines that the Serious Harm or threat of Serious Harm to the Marine Environment, which is likely to occur or has occurred, is attributable to a breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to **[article 165 (2) (m) of the Convention and Part XI of these regulations]** **[regulation 96]**.

6. In the case of serious damage to the Marine Environment resulting from accidents or contingencies that cannot be contained, mitigated or repaired, the Contractor, together with the Authority, should set the compensation measures, proportionally to the damage caused.

Part II

Applications for approval of Plans of Work in the form of contracts

Section 1

Applications

Regulation 5

Qualified applicants

1. Subject to the provisions of the Convention, the following may apply to the Authority for approval of Plans of Work:

(a) The Enterprise, on its own behalf or in a joint arrangement; and

(b) States parties, State enterprises or natural or juridical persons which possess the nationality of States or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements of these regulations.

2. Each application shall be submitted:

(a) In the case of a State, by the authority designated for that purpose by it;

(b) In the case of the Enterprise, by its competent authority; and

(c) In the case of any other qualified applicant, by a designated representative, or by the authority designated for that purpose by the sponsoring State or States.

3. Each application by a State enterprise or [one] [another] of the entities referred to in paragraph 1 (b) above shall be in one of the languages of the Authority and shall [also] contain:

(a) The name of the applicant and Sufficient information to determine the nationality of the applicant or the identity of the State or States by which, or by whose nationals, the applicant is effectively controlled; and

(b) The principal place of business or domicile and, if applicable, the place of registration of the applicant.

(c) Sufficient information that the applicant has the necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice using appropriately qualified and adequately supervised personnel;

4. Each application submitted by a partnership or consortium of entities shall contain the information required by these regulations in respect of each member of the partnership or consortium.

5. In the case of a consortium or any group, the consortium or group shall specify in its application a lead member of the consortium or group.

Regulation 6

Certificate of sponsorship

1. Each application by a State enterprise or [one] [another] of the entities referred to in regulation 5 (1) (b) shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the applicant has more than one nationality, as in the case

of a partnership or consortium of entities from more than one State, each State involved shall issue a certificate of sponsorship.

2. Where an applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship.

3. Each certificate of sponsorship shall be duly signed on behalf of the State by which it is submitted, and shall contain:

(a) The name, **address and contact details** of the applicant;

(b) The name of the sponsoring State;

(c) A statement that the applicant is:

(i) A national of the sponsoring State; or

(ii) Subject to the effective control of the sponsoring State or its nationals;

(d) A statement by the sponsoring State that it sponsors the applicant;

(e) The date of deposit by the sponsoring State of its instrument of ratification of, or accession or succession to, the Convention, and the date on which it consented to be bound by the Agreement; and

(f) A declaration that the sponsoring State assumes responsibility in accordance with articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.

4. States or other qualified applicants in a joint arrangement with the Enterprise shall also comply with this regulation.

Regulation 7

Form of applications and information to accompany a Plan of Work

1. Each application for approval of a Plan of Work shall be in the form prescribed in annex I to these regulations, shall be addressed to the Secretary-General and shall conform to the requirements of these regulations.

2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:

(a) Accept as enforceable **during all stages of the process chain** and comply with the applicable obligations created by the provisions of Part XI of the Convention, **the Agreement**, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;

(b) Accept control by the Authority of activities in the Area **during all stages of the process chain**, as authorized by the Convention;

(c) Provide the Authority with a written, **substantiated** assurance that its obligations under its contract will be fulfilled in good faith; and

[(d) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention **as well as with those Guidelines whose legal status is mandatory and comply in good faith with those Guidelines that are not binding.]**

3. An application shall be prepared in accordance with these regulations **[and Standards]** and accompanied by the following:

(a) The data and information to be provided pursuant to section 11.2 of the standard clauses for exploration contracts, as annexed to the relevant Exploration Regulations;

(a)bis A test mining study prepared in accordance with Regulation [48bis] Paragraph 2 or 3, as applicable, and Annex [IVter];

(b) A Mining Workplan prepared in accordance with annex II to these regulations;

(c) A Financing Plan prepared in accordance with annex III to these regulations;

(d) An Environmental Impact Statement prepared in accordance with regulation 47 and in the format prescribed in annex IV to these regulations;

(e) An Emergency Response and Contingency Plan prepared in accordance with annex V to these regulations;

(f) A Health and Safety Plan and a Maritime Security Plan prepared in accordance with annex VI to these regulations;

(g) A Training Plan in fulfilment of article 15 of annex III to the Convention, prepared in accordance with the Guidelines;

(h) An Environmental Management and Monitoring Plan prepared in accordance with regulation 48 and annex VII to these regulations **which documents that management and monitoring are in compliance with the applicable Regional Environment Management Plan;**

(h)bis Information regarding the environmental management system that the Contractor will implement;

(i) A Closure Plan prepared in accordance with regulation 59 of and annex VIII to these regulations; and

(j) An application processing fee in the amount specified in appendix II.

4. Where the proposed Plan of Work proposes two or more non-contiguous Mining Areas, the Commission may require separate documents under paragraphs 3 **(b), (d), (h) and (i)** above for each Mining Area, unless the applicant demonstrates **to the satisfaction of the Commission** that a single set of documents is appropriate, taking account of the relevant Guidelines.

5. Where a single set of documents is submitted by the applicant and the Commission considers it is not appropriate, the Commission may reject the application and request separate documents under paragraphs 3 (d), (h) and (i) above for each Mining Area.

Regulation 8

Area covered by an application

1. Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of coordinates in accordance with the most recent applicable international standard used by the Authority.

1alt. Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of geographical coordinates in accordance with the World Geodetic System 84.

2. The areas under application need not be contiguous and shall be defined in the application in the form of blocks comprising one or more cells of a grid, as provided by the Authority.

3. The area under application shall be located within an exploration Contract Area.

Section 2

Processing and review of applications

Regulation 9

Receipt, acknowledgement and safe custody of applications

1. The Secretary-General shall:

(a) Acknowledge in writing, within ~~[14]~~ **[30]** Days, receipt of every application for approval of a Plan of Work submitted under this Part, specifying the date of receipt;

(b) Place the application, together with the attachments and annexes thereto, in safe custody and ensure the confidentiality of all Confidential Information contained in the application; and

(c) Within 30 Days of receipt of every application for approval of a Plan of Work submitted under this Part:

(i) Notify the members of the Authority of the receipt of such application and circulate to them ~~[information of a general nature which is not confidential regarding the application]~~ **[the contents of the application save for any Confidential Information contained in the application]**; and

(ii) Notify the members of the Commission of receipt of such application.

2. The Commission shall, subject to regulation 11 (4), consider such application at its next meeting, provided that the notifications and information under paragraph 1 (c) above have been circulated at least ~~[30]~~ **[90]** Days prior to the commencement of that meeting of the Commission. **The Commission may defer consideration of such application to its next meeting if it considers the application to be overly complex.**

Regulation 10

Preliminary review of application by the Secretary-General

1. The Secretary-General shall review an application for approval of a Plan of Work and determine whether an application is complete for further processing. Should there be more than one application for the same area and same Resource category, the Secretary-General shall determine whether the applicant has preference and priority in accordance with article 10 of annex III to the Convention. **In case there is a potential applicant who has preference and priority in the same area and same Resource category under Exploration contract, the Secretary-General shall confirm the intention of such a potential applicant to apply. Where the application concerns a Reserved Area, the Enterprise shall be given an opportunity to decide whether it intends to carry out activities in the area in accordance with article 9 of annex III to the Convention.**

1alt. The Secretary-General shall determine whether an applicant has preference and priority in accordance with Article 10 of Annex III to the Convention, and in case of any dispute, it shall be submitted to the Commission to make recommendations, upon which the Council shall make the decision.

1bis. The Secretary-General shall notify the members of the Authority of the determination made, if any, as to whether the applicant has preference and priority.

2. Where an application is not complete, the Secretary-General shall, within 45 Days of receipt of the application, notify the applicant, specifying the information which the applicant must submit in order to complete the application, **[together with a justification in writing as to why the information is necessary]** and a date by which the application must be completed. Further processing of an application will not begin until the Secretary-General determines that the application is complete, which includes payment of the administrative fee specified in appendix II. **An application will not be processed further if there is another operator who has a preference and priority and an intention to apply in accordance with regulation 10 (1).**

Regulation 11

Publication and review of the Environmental Plans

1. The Secretary-General shall, within seven Days after determining that an application for the approval of a Plan of Work is complete under regulation 10:

(a) Place the Environmental Plans **and any information necessary for their assessment as well as the non-confidential parts of the test mining study** on the Authority's website for a period of **[60] [90]** Days, and **notify and** invite members of the Authority **[and] [.]** Stakeholders **and the general public** to submit comments in writing, taking account of the relevant Guidelines; and

(a)alt. Notify [relevant adjacent] coastal States in writing and place the Environmental Impact Statement, the Regional Environmental Management and Monitoring Plan and the Closure Plan on the Authority's website for a period of 60 Days, and invite members of the Authority and Stakeholders to submit comments in writing in accordance with the Guidelines; and

(b) Request the Commission to provide its comments on the Environmental Plans within the comment period.

(b)alt1. Request the Commission to provide its comments on the Environmental Plans and the test mining study, prepared in accordance with Regulation [48bis] Paragraph 2 or 3, as applicable, and Annex [IVter], within the comment period. Confidential information pursuant to Regulation 89 contained in the test mining study shall not be made publicly available.

(b)alt2. Request the Commission to provide its comments on the Environmental Plans within the comment period. In the case the Commission evaluates that there are aspects of the Environmental Plans that are not covered entirely by its own internal expertise, should nominate within 7 Days from the publication of the Environmental Plans on the Authority's website at least three independent experts selected on the basis of their significant experience or record of publications in a particular deep sea environment or technology sector.

2. The Secretary-General shall, within seven Days following the close of the comment period, provide the comments submitted by members of the Authority, Stakeholders, **the general public**, the Commission and any comments by the Secretary-General to the applicant for its consideration. The applicant shall consider the comments and may revise the Environmental Plans **and the test mining study** or provide responses in reply to the comments and shall submit any revised plans or responses within a period of 30 Days following the close of the comment period, **unless otherwise decided by the Secretary-General after considering a request**

by the applicant for the extension of the period. Such an extension of the period may be requested only when revision of plans or responses takes more than 30 Days and the request shall be made before the time period of 30 Days expires. The extension of the period shall be informed by posting on the Authority's website. All comments shall be published on the ISA Website.

3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the Environmental Plans or revised plans **and the test mining study** in the light of the comments made under paragraph 2 above, together with any responses by the applicant, and any additional information provided by the Secretary-General.

4. Notwithstanding the provisions of regulation 12 (2), the Commission shall not consider an application for approval of a Plan of Work until the Environmental Plans **and the test mining study** have been published and reviewed in accordance with this regulation.

5. The Commission shall prepare a report on the Environmental Plans **and the test mining study**. The report shall include details of the Commission's determination under regulation 13 (4) (e) as well as [a summary of] the comments [or] [and] responses made under regulation 11 (2) **as well as any further information provided by the Secretary-General under regulation 11(2)**. The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14 **and changes subsequently made to application documents by the applicant**. Such report on the Environmental Plans or revised plans shall be published on the Authority's website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15. **In preparing the report, the Commission may seek advice from recognized experts as necessary. In such case, the Commission shall clarify the necessity of advice from experts and seek prior approval of the Council. The experts shall be selected and appointed in accordance with the relevant Guidelines.**

Section 3

Consideration of applications by the Commission

Regulation 12

General

1. The Commission shall examine applications in the order in which they are received by the Secretary-General.

1bis. Should there be more than one application for the same area and same Resource category, the Commission shall make recommendations to the Council on whether the applicant has preference and priority in accordance with Article 10 of Annex III to the Convention.

2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from the date of the completion of the requirements for review of the Environmental Plans, in accordance with regulation 11 [(1)(a)] (4) and subject to regulation 14 (2).

2bis. If an application is overly complex or incomplete information has been submitted by the applicant, the Commission may delay its reports and recommendations under regulation 12(2) by a further 90 Days.

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and shall have regard to the principles, policies and objectives relating to activities in the Area as

provided for in Part XI of and annex III to the Convention, and in the Agreement [, and in particular the manner in which the proposed Plan of Work contributes to realizing benefits for mankind as a whole as specified in the decisions of the Council and Assembly.

4. In considering the proposed Plan of Work, the Commission [shall] [may] take into account:

(a) [Any] [Relevant] reports from the Secretary-General;

(b) Any advice or reports sought by the Commission or the Secretary-General from independent competent persons identified in the Commission's report to Council in respect of the [application] [environmental plan] [environmental matters] to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;

(b)bis. Any concern of [relevant adjacent] coastal States with respect to the Plan of Work, REMP and closure Plan submitted;

(c) The previous operating record of responsibility of the applicant; [and]

(c)bis. The previous operating record of the Sponsoring State(s) and the Sponsoring State's technical, resources, and enforcement capabilities to monitor the applicant's activities; and

(d) Any [further] [additional] information [supplied by] [from] the applicant sought by the Commission prior to, and during the period of, the Commission's evaluation pursuant to regulation 14.

Regulation 13

Assessment of applicants

1. The Commission shall determine taking into account the comments made by State Parties and Stakeholders, any responses by the applicant and any additional information or comments provided by the Secretary-General, if the applicant:

(a) Is a qualified applicant under regulation 5;

(b) Has prepared the application in conformity with these regulations, the Standards and the applicable Guidelines;

(c) Has given the undertakings and assurances specified in regulation 7 (2);

(d) Has satisfactorily discharged its obligations to the Authority;

(e) Has [, or can demonstrate that it will have,] the financial and technical capability and capacity to carry out the Plan of Work, meet or exceed environmental performance obligations and to meet all obligations under an exploitation contract according to criteria defined by the Council; and

[(f) Has demonstrated the economic viability of the mining project.]

(g) Has demonstrated, in relation to the accommodation of other activities in the Marine Environment, due diligence to:

(i) identify in-service and planned submarine cables and pipelines in, or adjacent to, the area under application using the publically-available data and resources as listed in the Guidelines;

(ii) where such submarine cables and pipelines are identified, consult with the operators of the cables and pipelines to agree measures the Contractor will take to reduce the risk of damage to the in-service and planned

submarine cables and pipelines (ie. such as an easement, or a mining exclusion zone within a reasonable radius);

(iii) identify sea lanes in, or adjacent to, the area under application that are essential to international navigation; and

(iv) identify areas of intense fishing activity in, or adjacent to, the area under application.

(h) Has demonstrated a satisfactory record of past performance both within the Area and in other States' jurisdictions.

2. In considering the financial capability of an applicant, the Commission shall determine in accordance with the Guidelines whether:

(a) The Financing Plan is compatible with proposed Exploitation activities; and

(b) The applicant [will be] **[is]** capable of committing or raising sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any exploitation contract, including:

(i) The payment of any applicable fees and other financial payments and charges in accordance with these regulations;

(ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan **and to restore and remediate the affected Marine Environment in case of a significant Incident;**

(iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan; and

(iv) Necessary access to insurance products that are appropriate to the financing of exposure to risk in accordance with Good Industry Practice.

3. In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant **provided sufficient information to demonstrate it** has [or will have]:

(a) Certification to operate under internationally recognised quality control and management standards;

(a)**bis.** The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice using appropriately qualified and adequately supervised personnel

(b) The technology and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, including the technical capability to monitor key environmental parameters and to modify management and operating procedures when appropriate;

(c) Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with Good Industry Practice, Best Available Techniques and Best Environmental Practices and these regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;

(d) The capability to respond effectively to Incidents, in accordance with the Emergency Response and Contingency Plan; and

(e) The capability **and capacity** to utilize and apply Best Available Techniques.

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4. The Commission shall determine if the proposed Plan of Work:
- (a) Is technically achievable and [economically] [commercially] viable;
 - (b) Reflects the economic life of the project;
 - (c) Provides for the effective protection of human health and safety of individuals engaged in Exploitation activities in accordance with the rules, regulations and procedures adopted by the Authority and by any other competent international organizations;
 - (d) Provides for Exploitation activities to be carried out with reasonable regard for other activities in the Marine Environment, including navigation, the laying of submarine cables and pipelines, fishing and marine scientific research, as referred to in article 87 of the Convention in accordance with the relevant Guidelines; and
 - (d)alt. Provides for Exploitation activities to be carried out with reasonable regard for other activities in the Marine Environment, as referred to in articles 87 and 147 of the Convention, including inter alia navigation, the laying of cables and pipelines, the right to maintain and repair existing submarine cables and pipelines, fishing and marine scientific research; and
 - (e) Provides, under the Environmental Plans, for the effective protection of the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, in particular the fundamental policies and procedures under regulation 2, taking into account in particular the cumulative effects of all relevant activities.

Regulation 14
Amendments to the proposed Plan of Work

1. At any time prior to making its recommendation to the Council and as part of its consideration of an application under regulation 12, the Commission may:
- (a) Request the applicant to provide additional information on any aspect of the application [within 30 Days of the date when the application is first considered] [prior to making a recommendation]; and
 - (b) Request the applicant to amend its Plan of Work, or propose specific amendments for consideration by the applicant where such amendments are considered necessary to bring the Plan of Work into conformity with the requirements of these regulations.
2. Where the Commission [proposes any amendment to the Plan of Work] [makes a request] under paragraph 1 (a) or (b) above, the Commission shall provide to the applicant a brief justification and rationale for such [proposed amendment] [a request]. The applicant must respond within 90 Days following receipt of such [proposal] [request] from the Commission by agreeing to the [proposal] [request], rejecting the [proposal] [request] or making an alternative [proposal] [request] for the Commission's consideration. The Commission shall then, in the light of the applicant's response, make its recommendations to the Council.

Regulation 15
Commission's recommendation for the approval of a Plan of Work

1. If the Commission determines that the applicant meets the criteria set out in regulation[s 12 (4) and] 13(4), it shall recommend approval of the Plan of Work to the Council.

2. The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in:

[(a) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant;]

(b) A Plan of Work approved by the Council for Exploration or Exploitation of other Resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved Plan of Work for other Resources;

(c) An area disapproved for Exploitation by the Council pursuant to article 162 (2) (x) of the Convention; or

(c)bis An area disapproved for exploitation by the Council, as determined in the applicable Regional Environmental Management Plan;

(d) A Reserved Area or an area designated by the Council to be a Reserved Area, except in the case of eligible applications under these regulations made in respect of a Reserved Area.

(e) An area or areas of particular environmental interest.

3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:

(a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work **as set out in the relevant Guidelines;** or

(a)bis. Such approval would permit a State party or entities sponsored by it to monopolize or significantly control the production of any single mineral or metal produced globally; or

(b) The total area allocated to a Contractor under any approved Plan of Work would exceed:

(i) 75,000 square kilometres in the case of polymetallic nodules;

(ii) 2,500 square kilometres in the case of polymetallic sulphides; or

(iii) 1,000 square kilometres in the case of cobalt-rich ferromanganese crusts; **or**

(c) Such approval would pose a reasonable risk of damage to an in-service or planned submarine cable or pipeline, or cause undue interference with the freedom to lay submarine cables and pipelines when considered in conjunction with other approved Plans of Work; or

(d) Any area included in a proposed Plan of Work is not covered by a regional environmental management plan.

(e) Such approval would undermine or contradict the regional goals, objectives or measures as determined by the requirements of the applicable Regional Environmental Management Plan.

4. If the Commission determines that the applicant does not meet the criteria set out in regulation[s 12 (4) and] 13(4), the Commission shall so inform the applicant in writing by providing the reasons why any criterion has not been met by the applicant, and provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant. **During this period the Commission shall not make a recommendation to the Council on the application.**

5. At its next available meeting, the Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, provided that the representations have been circulated at least 30 Days in advance of that meeting. The Commission shall then consider the application afresh, in the light of the representations, in accordance with this Section 3.

Section 4

Consideration of an application by the Council

Regulation 16

Consideration and approval of Plans of Work

The Council shall consider the reports and recommendations of the Commission relating to approval of Plans of Work in accordance with paragraph 11 of section 3 of the annex to the Agreement.

Part III

Rights and obligations of Contractors

Section 1

Exploitation contracts

Regulation 17

The contract

1. Upon the Council's approval of a Plan of Work, the Secretary-General shall prepare an exploitation contract between the Authority and the applicant in the form prescribed in annex IX to these regulations.
2. The exploitation contract shall be signed on behalf of the Authority by the Secretary-General or duly authorized representative. The designated representative or the authority designated under regulation 5 (2) shall sign the exploitation contract on behalf of the applicant. The Secretary-General shall notify all members of the Authority in writing of the conclusion of each exploitation contract.
3. The exploitation contract and its schedules is a public document, and shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted.

Regulation 18

Rights and exclusivity under an exploitation contract

Alt. Exclusive rights of a Contractor under an exploitation contract

1. An exploitation contract shall confer on a Contractor the exclusive right to:
 - (a) Explore for the specified Resource category in accordance with [paragraph 7 below] [the rules, regulations and procedures of the Authority, where the approved Plan of Work provides for the stage of exploration]; and
 - (b) Exploit the specified Resource category in the Contract Area in accordance with the approved Plan of Work, provided that production shall only take place in approved Mining Areas.
2. The Authority shall not permit any other entity to exploit or explore for the same Resource category in the Contract Area for the entire duration of an exploitation contract.
3. The Authority, in consultation with a Contractor, shall ensure that no other entity holding a contract with the Authority operates in the Contract Area for a different category of resources in a manner which might interfere with the rights granted to the Contractor.
4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended or terminated except in accordance with the terms thereof, and articles 18 and 19 of Annex III of the Convention.
5. An exploitation contract shall not confer any interest or right on a Contractor in or over any other part of the Area or its Resources other than those rights expressly granted by the terms of the exploitation contract or these regulations nor limit any (other) freedoms of the high seas.
6. The Contractor shall, subject to regulation 20, have the exclusive right to apply for and be granted a renewal of its exploitation contract.
7. In relation to exploration activities in the Contract Area conducted under an exploitation contract, the applicable Exploration Regulations shall continue to apply

as set out in the relevant Guidelines. In particular, the Contractor shall be expected to continue to show due diligence in conducting exploration activities in the Contract Area, together with [the payment of applicable fees and] the reporting of such activities and its results to the Authority in accordance with the applicable Exploration Regulations, including under regulation 38 (2) (k).

8. The Contractor shall exercise the exclusive rights provided for in this regulation in consistence with articles 87 and 147 of the Convention.

Regulation 19

Joint arrangements

1. Contracts may provide for joint arrangements between a Contractor and the Authority through the Enterprise, in the form of joint ventures or production-sharing, as well as any other form of joint arrangement, which shall have the same protection against revision, suspension or termination as contracts with the Authority.

2. The Council shall enable the Enterprise to engage in seabed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b), of the Convention.

Regulation 20

Term of exploitation contracts

1. Subject to the provisions of section 8.3 of the exploitation contract, the maximum initial term of an exploitation contract is 30 years **and 50 years for contractors which are developing States**, taking account of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan and including a reasonable time period for the construction of commercial-scale mining and processing systems.

2. An application to renew an exploitation contract shall be made in writing addressed to the Secretary-General and shall be made no later than [one year] **[two years]** before the expiration of the initial period or renewal period, as the case may be, of the exploitation contract.

3. The Contractor shall supply such documentation as may be specified in the Guidelines. If the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes, the Contractor shall submit a revised Plan of Work **including an updated EIA**.

4. The Commission shall consider such application to renew an exploitation contract at its next meeting, provided the documentation required under paragraph 3 has been circulated at least 30 Days prior to the commencement of that meeting of the Commission.

5. In making its recommendations to the Council under paragraph 6 below, including any proposed amendments to the Plan of Work or revised Plan of Work, the Commission shall take account of any report on the review of the Contractor's activities and performance under a Plan of Work under regulation 58.

6. The Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and [an exploitation contract shall be renewed by the Council] **[and the Council approves the renewal application]**, provided that:

(a) The Resource category is recoverable annually in commercial and profitable quantities from the Contract Area;

(b) The Contractor is in compliance with the terms of its exploitation contract and the Rules of the Authority, including the rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;

(b)bis. The cumulative environmental impact does not exceed the thresholds set by the applicable Regional Environmental Management Plan;

(c) The exploitation contract has not been terminated earlier; and

(d) The Contractor has paid the applicable fee in the amount specified in appendix II.

(e) The Commission has reassessed the Contractor consistent with the requirements of regulation 13(1), 13(2) and 13(3) and is satisfied that the Contractor has the ability to continue exploitation; and

(f) The Sponsoring State has reconfirmed their sponsorship of the Contractor by reissuing their certificate of sponsorship.

7. Each renewal period shall be a maximum of 10 years **for a maximum overall duration of the exploitation contract of 60 years.**

8. Any renewal of an exploitation contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the designated representative or the authority designated by the Contractor. The terms of a renewed exploitation contract shall be those set out in the standard exploitation contract annexed to these regulations that is in effect on the date that the Council approves the renewal application.

9. Sponsorship is deemed to continue throughout the renewal period unless the sponsoring State or States terminates its sponsorship in accordance with regulation 21.

10. An exploitation contract in respect of which an application for renewal has been made shall, despite its expiry date, remain in force until such time as the renewal application has been considered and its renewal has been granted or refused.

Regulation 21

Termination of sponsorship

1. Each Contractor shall ensure that it is sponsored by a State or States, as the case may be, throughout the period of the exploitation contract in accordance with regulation 6 **1**, and to the extent necessary that it complies with regulations 6 (1) and (2) **1**.

2. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination. Termination of sponsorship takes effect **[no later than] [12] [6] months** after the date of receipt of the notification by the Secretary-General **unless the notification specifies an earlier date**, except for termination due to a Contractor's non-compliance under its terms of sponsorship, in which case termination takes effect no later than 6 months after the date of such notification.

2alt. A State may terminate its sponsorship by providing to the Secretary-General a written notice describing the reasons for such termination and the date termination is to take effect taking into account the following timeframes:

(i) Termination due to a Contractor's non-compliance under its terms of sponsorship, negligence or environmental damage: termination to take effect no

later than 6 months after the date of receipt of the notification by the Secretary-General;

(ii) Termination due to reasons other than those listed in subparagraph (i) above: termination to take effect no later than 12 months after the date of receipt of the notification by the Secretary-General.

2alt bis. If the reasons for termination of sponsorship include non-compliance under its terms of sponsorship, negligence or environmental damage, the Contractor must suspend its mining operations until the Council has considered the matter in accordance with paragraph 6 below.

3. In the event of termination of sponsorship, due to reasons other than those listed at subparagraph 2(i) above, the Contractor shall, within the period referred to in subparagraph 2(ii) above, obtain another sponsoring State or States in accordance with the requirements of regulation 6, and in particular in order to comply with regulation 6 (1) and (2). Such State or States shall submit a certificate of sponsorship in accordance with regulation 6. The exploitation contract terminates automatically if the Contractor fails to obtain a sponsoring State or States within the required period.

4. A sponsoring State or States is not discharged from any obligations or deprived of any rights accrued while it was a sponsoring State by reason of the termination of its sponsorship [, nor shall such termination affect any legal rights and obligations created during such sponsorship].

5. The Secretary-General shall notify the members of the Authority of a termination or change of sponsorship.

6. After a sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission, which shall take account of the reasons for the termination of sponsorship, especially in the case of termination of contract attributable to a breach of compliance [may] [should] require the Contractor to suspend, or continue the suspension of, its mining operations until such time as the Contractor has proved to the satisfaction of the Council that the reasons for the termination of sponsorship have been addressed and a new certificate of sponsorship is submitted.

7. Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of any termination of sponsorship.

Regulation 22

Use of exploitation contract as security

1. The Contractor may, solely for the purpose of raising financing to effect its obligations under an exploitation contract and only [with the prior consent of the sponsoring State or States and of the Council, based on the recommendations of the Commission,] mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an exploitation contract [for the purpose of raising financing to effect its obligations under an exploitation contract].

2. [In seeking consent under this regulation,] [a] [A] Contractor shall disclose to the Council and Commission the terms and conditions of any such encumbrance referred to in paragraph 1 above and its potential impact on the activities under the exploitation contract in the event of any default by the Contractor.

3. [As a condition to giving consent under this regulation,] [the] **[The]** Authority shall request evidence that the beneficiary of any encumbrance referred to in paragraph 1 above shall agree either, upon foreclosure, to undertake Exploitation activities in accordance with the requirements of the exploitation contract and these regulations, **[in which case the beneficiary must fulfil the requirement of paragraph 4 and 5 of regulation 23]** or [to] **[that such a beneficiary shall transfer the mortgaged property only to a transferee that fulfils the requirements of paragraphs 4 and 5 of regulation 23 as determined by the Commission.**

4. [In giving consent under this regulation,] [the] **[The]** Council may require that the beneficiary of the encumbrance referred to in paragraph 1 above:

(a) Shall subscribe to any internationally adopted standards for the extractive industries which are widely accepted; and

(b) Shall be properly regulated through a national financial conduct authority in accordance with the Guidelines.

5. A Contractor shall file with the Seabed Mining Register a summary of any agreement that results or may result in a transfer or assignment of an exploitation contract, part of an exploitation contract or any interest in an exploitation contract, including registration of any security, guarantee, mortgage, pledge, lien, charge or other encumbrance over all or part of an exploitation contract.

6. The Authority shall not be obliged to provide any funds or issue any guarantees or otherwise become liable directly or indirectly in the financing of the Contractor's obligations under an exploitation contract.

Regulation 23

Transfer of rights and obligations under an exploitation contract

[1. A Contractor may transfer its rights and obligations under an exploitation contract in whole or in part only with the prior consent of the Council, based on the recommendations of the Commission **and with notification to the sponsoring State or States.**]

2. An application for consent to transfer the rights and obligations under an exploitation contract shall be made [to the Secretary-General] jointly by the Contractor and transferee **to the Secretary-General which shall transmit it to the Commission.**

2alt. The Secretary-General will be informed jointly by the Contractor and transferee of the transfer of the rights and obligations under an exploitation contract.

3. The Commission shall [consider the application for consent to] **[review and confirm the]** transfer at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting.

4. The Commission shall [consider whether] **[ensure that]** the transferee:

(a) Meets the requirements of a qualified applicant as set out in regulation 5;

(b) Has submitted a certificate of sponsorship as set out in regulation 6;

(c) Has submitted a form of application as set out in regulation 7 if the Secretary-General considers that there is a Material Change to the Plan of Work;

(d) Has paid the administrative fee as set out in appendix II;

(e) Meets the criteria set out in regulation[s 12 (4) and] **13(4)**, and has provided Environmental Plans that comply with regulation 13 (4) (e); and

(f) Has deposited an Environmental Performance Guarantee as set out in regulation 26.

5. The Commission shall not [recommend approval of] **[sanction]** the transfer if it would:

(a) Involve conferring on the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention; or

(b) Permit the transferee to monopolize the conduct of activities in the Area with regard to the Resource category covered by the exploitation contract **or the transferee would monopolize or significantly control the production of any single mineral or metal produced globally.**

6. Where the exploitation contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not [recommend consent to] **[sanction]** the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.

7. Where the Commission determines that the requirements of paragraphs 4, 5 and 6 above have been fulfilled, it shall [recommend approval of] **[confirm]** the [application for consent] **[transfer]** to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not [unreasonably] withhold [consent to a] **[sanctioning of the]** transfer if the requirements of this regulation are complied with.

8. A transfer is validly effected only upon:

(a) Execution of the assignment and novation agreement between the Authority, the transferor and the transferee;

(b) Payment of the prescribed transfer fee pursuant to appendix II; and

[(c) Recording by the Secretary-General of the transfer in the Seabed Mining Register.]

9. The assignment and novation agreement shall be signed on behalf of the Authority by the Secretary-General or by a duly authorized representative, and on behalf of the transferor and the transferee by their duly authorized representatives.

10. The terms and conditions of the transferee's exploitation contract shall be those set out in the standard exploitation contract annexed to these Regulations that is in effect on the date that the Secretary-General or a duly authorized representative executes the assignment and novation agreement.

Regulation 24

Change of control

1. For the purposes of this regulation, a “change in control” occurs where there is a change [in 50 per cent or more of] the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, **that results in the holding of the beneficial ownership of 50% or more of the Contractor or the controlling interest in the Contractor by an entity that previously held a minority share or had no prior equity interest,** or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee.

2. Where there is a change of control of the Contractor, or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor, the Contractor shall, [where practicable] **as soon as reasonably practicable but no later than 24 hours,** notify the Secretary-General in advance

of such change of control, [but in any event within 90 Days thereafter] [and in the case of an entity providing an Environmental Performance Guarantee, no later than within 90 Days thereafter]. The Contractor shall provide the Secretary-General with such details as he or she shall reasonably request of the change of control.

3. After consulting the Contractor or entity providing the Environmental Performance Guarantee, as the case may be, the Secretary-General may:

(a) Determine that, following a change of control of the Contractor or the entity providing the Environmental Performance Guarantee, the Contractor will continue to be able, and in particular will have the financial capability, to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect;

(b) In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these regulations, in which case regulation 23 shall apply; or

(c) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with regulation 26, within such time frame as the Secretary-General shall stipulate.

4. Where the Secretary-General determines that, following a change of control, a Contractor may not have the financial capability to meet its obligations under its exploitation contract, the Secretary-General shall inform the Commission accordingly. The Commission itself shall inquire the Secretary-General about the financial capability of a Contractor, following a change of control. The Commission shall submit a report of its findings and recommendations to the Council.

Section 2

Matters relating to production

Regulation 25

Documents to be submitted prior to production

1. At least 12 months prior to the proposed commencement of production in a Mining Area, the Contractor shall provide to the Secretary-General a Feasibility Study prepared in accordance with Good Industry Practice, taking into account the Guidelines as well as the results of the test mining study pursuant to Regulation [48bis] Paragraph 2 or 3, as applicable, and in accordance with Annex [IVter]. In the light of the Feasibility Study and the test mining study, [the Secretary-General shall consider whether any Material Change needs to be made to the Plan of Work in accordance with regulation 57 (2). If he or she determines that any such Material Change needs to be made, the Contractor shall prepare and submit to the Secretary-General a revised Plan of Work accordingly] [If the Secretary-General considers any Material Change needs to be made to the Plan of Work, he or she shall submit this matter to the Commission. If the Commission determines as such, the Contractor shall prepare and submit to the Commission a revised Plan of Work accordingly].

2. Where, as part of a revised Plan of Work, the Contractor delivers a revised Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan under paragraph 1 above, regulation 57 (2) shall apply mutatis mutandis to such Environmental Plans [if the modification to the Environmental

Plans constitutes a Material Change], and such Environmental Plans shall be dealt with in accordance with the procedure set out in regulation 11.

3. Provided that, [where applicable], the procedure under regulation 11 has been completed, the Commission shall, at its next meeting, provided that the documentation has been circulated at least 30 Days before the meeting, examine [the Feasibility Study and] any revised Plan of Work supplied by the Contractor under paragraph 1 above, and in the light of any comments made by members of the Authority, Stakeholders and the Secretary-General on the Environmental Plans.

3bis. An application to renew an exploitation contract shall be accompanied by updated Environmental Plans to be reviewed in accordance with the provisions of regulation 11.

4. If the Commission determines that the revised Plan of Work, including any amendments thereto dealt with in accordance with regulation 14, continues to meet the requirements of regulation 13, it shall recommend to the Council the approval of the revised Plan of Work.

5. The Council shall consider the report and recommendation of the Commission relating to the approval of the revised Plan of Work in accordance with paragraph 11 of section 3 of the annex to the Agreement.

6. The Contractor may not commence production in any part of the Area covered by the Plan of Work until either:

(a) The Secretary-General has determined that no Material Change to the Plan of Work needs to be made in accordance with regulation 57 (2); or

(b) In the event that a Material Change is made, the Council has given its approval to the revised Plan of Work pursuant to paragraph 5 above; and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26.

Regulation 26 Environmental Performance Guarantee

1. A Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority and no later than the commencement date of production in the Mining Area.

2. The required form and amount of the Environmental Performance Guarantee shall be determined according to the [Guidelines] **[relevant [Standards] [rules]]**, and shall reflect the likely costs required for:

(a) The premature closure of Exploitation activities;

(a)bis. The repair of an in-service submarine cable or pipeline in, or adjacent to, the application area that was damaged as a result of the Contractors activities;

(a)ter. Responding to, and remediating, a significant environmental Incident;

(b) The decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and

(c) The post-closure monitoring and management of residual Environmental Effects.

3. The Council shall decide the amount of an Environmental Performance Guarantee in Standard taking into account the recommendation of the Commission and Finance Committee. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period according to the relevant [Guidelines] [Standards].

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated annually by the Contractor, [where]:

(a) Where [T][t]he Closure Plan is updated in accordance with these regulations; or

(b) As the result of:

(i) A performance assessment under regulation 52;

(ii) A modification of a Plan of Work under regulation 57; or

(iii) A review of activities under a Plan of Work under regulation 58; and

(c) At the time of review by the Commission of a final Closure Plan under regulation 60.

(d) Inflation and other market or economic conditions impact on the amount of the guarantee that must be held.

5. A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date and lodge a revised guarantee in favour of the Authority.

6. The Authority shall hold such guarantee in accordance with its policies and procedures, which shall provide for:

(a) The repayment or release of any Environmental Performance Guarantee, or part thereof, upon compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee; or

(b) The forfeiture of any Environmental Performance Guarantee, or part thereof, where the Contractor fails to comply with such obligations.

7. The requirement for an Environmental Performance Guarantee under this regulation shall be applied in a uniform [and non-discriminatory] manner taking into account relevant factors such as: a Contractor's level of experience, record of past performance (i.e. environment or safety record), and the location of the activity, including proximity to in service cables or pipelines.

8. The provision of an Environmental Performance Guarantee by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee.

Regulation 27

Commencement of production

1. Where the requirements of regulation 25 are satisfied and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26, the Contractor, consistent with Good Industry Practice, shall make [commercially reasonable] [all] efforts to bring the Mining Area into Commercial Production in accordance with the Plan of Work.

2. Once Commercial Production has begun, the Contractor shall notify the Secretary-General. Upon notification, the Secretary-General shall notify members of the Authority, in particular coastal states in close proximity to the

Mining Area, that Commercial Production has begun and the location of the Mining Area.

**Regulation 28
Maintaining Commercial Production**

1. The Contractor [shall] **[will make best efforts to]** maintain Commercial Production in accordance with the exploitation contract and the Plan of Work annexed thereto and these regulations, **and market conditions.** A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates contemplated in the Feasibility Study.

[2. The Contractor shall notify the Secretary-General and the sponsoring State or States if it:

(a) Fails to comply with the Plan of Work; or

(b) Determines that it will not be able to adhere to the Plan of Work in future.]

3. Notwithstanding paragraph 1 above, the Contractor shall temporarily reduce or suspend production whenever such reduction or suspension is required to protect the Marine Environment from Serious Harm or a threat of Serious Harm or to protect human health and safety **upon the receipt of emergency order pursuant to regulation 4(4) or on the Contractor's own decision that maintaining the level of production would result in Serious Harm or a threat of Serious Harm.** A Contractor shall notify the Secretary-General **and the sponsoring State or States** of such a reduction or suspension of production as soon as is practicable and no later than **[72] [24]** hours after production is reduced or suspended.

4. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

**Regulation 29
Reduction or suspension in production due to market conditions**

Alt. Extended suspension in production due to market conditions

1. Notwithstanding regulation 28, a Contractor may temporarily reduce or suspend production due to market conditions but shall notify the Secretary-General thereof **[as soon as practicable thereafter] [no later than one month from the date of the reduction or suspension].** Such reduction or suspension may be for a period of up to 12 months.

1alt. A Contractor may temporarily suspend production due to market conditions.

2. If the Contractor proposes to continue the reduction or suspension for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least 30 Days prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time. The Commission shall, upon determining that the reasons for the reduction or suspension are reasonable, including where the prevailing economic conditions make Commercial Production impracticable, recommend approval of the suspension to the Council. The Council

shall, based on the recommendation of the Commission, [consider] [decide on] the reduction or suspension requested by the Contractor. The Contractor may apply for more than one suspension. During the period when the Contractor reduces or suspends production, the annual fixed fee or royalties paid by the Contractor shall be exempted or deducted appropriately.

2alt. If the Contractor suspends production for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least 30 Days prior to the end of the 12-month period, giving its reasons for seeking a suspension of that length of time.

3. In the event of any suspension in mining activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the Closure Plan. [Where suspension continues for a period of more than 12 months, the Commission may require the Contractor to submit a final Closure Plan in accordance with regulation 60.] [Where the Contractor suspends all production for [more than] five years [or more], the Council may terminate the exploitation contract and the Contractor shall be required to implement the final Closure Plan] [The contract can be terminated after five years of suspension on the condition that the Contractor is entitled to priority and preference in exploiting the same area for the same resource].

4. A Contractor shall notify the Secretary-General as soon as it recommences any mining activities, and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such non-market information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall notify the Council that production has recommenced.

Section 3

Safety of life [and property] at sea

Regulation 30

Safety, labour and health standards

1. The Contractor shall ensure at all times that:

(a) All vessels and Installations operating and engaged in Exploitation activities are in good repair, in a safe and sound condition and adequately manned, display navigation lights and shapes as per Collision Regulations and comply with paragraphs 2 and 3 below; and

(b) All vessels and Installations employed in Exploitation activities have an appropriate class designation and shall remain in class for the duration of the exploitation contract.

2. The Contractor shall ensure compliance with the applicable international rules and standards established by competent international organizations or general diplomatic conferences concerning the safety of life at sea, the pollution of the Marine Environment by vessels, the prevention of collisions at sea, the training of seafarers and the treatment of crew members, as well as [any] rules, regulations and procedures [and Standards adopted from time to time by the Council relating to] [of the Authority on] these matters.

3. In addition, Contractors shall:

(a) Comply with the relevant national laws relating to vessel standards and crew safety of their flag State in the case of vessels, or their sponsoring State or States in the case of Installations; and

(b) Comply with the national laws of its sponsoring State or States in relation to any matters that fall outside of the jurisdiction of the flag State, such as worker rights for non-crew members and human health and safety that pertains to the mining process rather than to ship operation.

4. The Contractor shall provide copies of valid certificates required under relevant international shipping conventions to the Authority upon request.

5. The Contractor shall ensure that:

(a) All of its personnel, before assuming their duties, have the necessary experience, training and qualifications and are able to conduct their duties safely, competently and in compliance with the Rules of the Authority and the terms of the exploitation contract;

(b) An occupational health, safety and environmental awareness plan is put in place to inform all personnel engaged in Exploitation activities as to the occupational and environmental risks which may result from their work and the manner in which such risks are to be dealt with; and

(c) Records of the experience, training and qualifications of all of its personnel are kept and made available to the Secretary-General upon request.

6. **When conducting its operations, [A] [a]** Contractor shall **develop, implement and maintain a safety management system, taking account of the relevant Guidelines.**

Section 4 Other users of the Marine Environment

Regulation 31

Reasonable regard for other activities in the Marine Environment

1. Contractors shall, consistent with the relevant Guidelines, carry out exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan [and any applicable international rules and standards established by competent international organizations]. In particular, each Contractor [shall exercise [due diligence] **reasonable regard**] to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area] **should carry out Exploitation activities with reasonable regard to submarine cables or pipelines so as to avoid destroying or damaging them**].

1alt. Contractors shall, consistent with the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any applicable international rules and standards established by competent international organizations, and relevant national laws and regulations of sponsoring States and flag States.

1alt bis. Each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area. In particular, the Contractor shall:

(a) comply with the measures it agreed with the operators of the submarine cables and pipelines to reduce the risk of damage to any in-service

cables and pipelines (such as an easement, or a mining exclusion zone within a reasonable radius); and

(b) ensure that any actions it takes will not interfere with the route of a planned submarine cable or pipeline.

2. The Authority, in conjunction with member States, shall take measures to ensure that other activities in the Marine Environment shall be conducted with reasonable regard for the activities of Contractors in the Area which includes but not limited to the Authority's facilitation of the coordination between two parties at early stages. For this reason, the Authority shall promote, inter alia, effective and early-stage consultations between the Contractors and the proponents of the other activities in the Area.

Section 5

Incidents and notifiable events

Regulation 32

Risk of Incidents

A Contractor shall reduce the risk of Incidents as much as reasonably practicable, to the point where the cost of further risk reduction would be grossly disproportionate to the benefits of such reduction, taking into account the relevant Guidelines. The reasonable practicability of risk reduction measures shall be kept under review in the light of new knowledge and technology developments and Good Industry Practice, Best Available Techniques and Best Environmental Practices. In assessing whether the time, cost and effort would be grossly disproportionate to the benefits of further reducing the risk, consideration shall be given to best practice risk levels compatible with the operations being conducted.

Regulation 33

Preventing and responding to Incidents

1. The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident, or prevent the effective management of such Incident.

2. The Contractor shall, upon becoming aware of an Incident:

(a) Notify its sponsoring State or States and the Secretary-General immediately, but no later than 24 hours from the [Incident occurring] [moment the Contractor becomes aware of the Incident];

(a)alt1. Notify its sponsoring State or States and the Secretary-General immediately 24 hours after the time at which it has reasonable grounds to believe that the Contractor should have become aware of the occurrence of the Incident;

(a)alt2. Notify its sponsoring State or States, [relevant adjacent] Coastal States and the Secretary-General immediately, as soon as reasonably practicable but no later than 24 hours from the incidence occurred;

(b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident;

(c) Undertake promptly, and within such time frame as stipulated, any instructions received from the Secretary-General in consultation with the sponsoring State or States, flag State, coastal State or relevant international organizations, as the case may be;

(d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident; and

(e) Record the Incident in the Incidents Register, which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under regulation 34.

3. The Secretary-General shall **promptly** report any Contractor that fails to comply with this regulation to its sponsoring State or States, **[relevant adjacent coastal States]** and the flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law.

4. The Secretary-General shall report such Incidents and measures taken to the Commission and the Council at their next available meeting.

Regulation 34

Notifiable events

1. A Contractor shall immediately notify its sponsoring State or States **[and] [.]** the Secretary-General **and relevant [adjacent] coastal States** of the happening of any of the events listed in appendix I to these regulations.

2. The Contractor shall, as soon as reasonably practicable, but no later than 24 hours after the Contractor becomes aware of any such event,

(a) provide written notification to the Secretary-General of the event, including a description of the event, the immediate response action taken (including, if appropriate, a statement regarding the implementation of an Emergency Response and Contingency Plan) and any planned action to be taken, **and**

(b) Record the notifiable events in the Incidents Register, which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under this regulation.

3. The Secretary-General shall consult with the sponsoring State or States, **relevant [adjacent] coastal States** and other regulatory authorities as necessary.

4. The Contractor shall ensure that all regulatory authorities are notified and consulted, as appropriate.

5. Where a complaint is made to a Contractor concerning a matter covered by these regulations, the Contractor shall record the complaint and shall report it to the Secretary-General within seven Days of the complaint being received.

Regulation 35

Human remains and objects and sites of an archaeological or historical nature

The Contractor shall **[immediately]** notify the Secretary-General in writing **within 24 hours** of any finding in the Contract Area of any human remains of an archaeological or historical nature, or any object or site of a similar nature, and its location, including the preservation and protection measures taken. The Secretary-General shall transmit such information, **within 7 Days of receiving it** to the sponsoring State, to the State from which the remains, **object or site** originated, if known, to the Director General of the United Nations Educational, Scientific and Cultural Organization and to any other competent international organization. Following the finding of any such human remains, object or site in the Contract Area, and in order to avoid disturbing such human remains, object or site, no further Exploration or Exploitation shall take place, within a reasonable radius, **to be determined by the Authority** until such time as the Council decides otherwise, after taking into account the views of the State from which the remains originated,

the Director General of the United Nations Educational, Scientific and Cultural Organization or any other competent international organization.

Section 6

Insurance obligations

Regulation 36

Insurance

1. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with applicable international maritime practice, consistent with Good Industry Practice and as specified in the relevant Guidelines.

[2. Contractors shall include the Authority as an additional assured. A Contractor shall use its best endeavours to ensure that all insurances required under this regulation shall be endorsed to provide that the underwriters waive any rights of recourse, including subrogation rights against the Authority in relation to Exploitation.]

3. The obligation under an exploitation contract to maintain insurance as specified in the Guidelines is a fundamental term of the contract. Should a Contractor fail to maintain the insurance required under these regulations, the Secretary-General shall issue a compliance order under regulation 103. The Secretary-General shall notify the Council at its next available meeting of such failure, and the corrective measures taken by the Contractor.

4. A Contractor shall not make any Material Change to or terminate any insurance policy **related to its Exploitation activities in the Area** without the prior consent of the Secretary-General.

5. A Contractor shall notify the Secretary-General immediately if the insurer terminates the policy or modifies the terms of insurance.

6. A Contractor shall notify the Secretary-General immediately upon receipt of claims made under its insurance.

7. A Contractor shall provide the Secretary-General at least annually with evidence of the existence of such insurance in accordance with regulation 38 (2) (i).

Section 7

Training commitment

Regulation 37

Training Plan

1. The Contractor shall conduct and carry out the training of personnel of the Authority and developing States on an ongoing basis in accordance with the approved Training Plan commitment under schedule 8 to the exploitation contract, these regulations and any training Guidelines.

2. The Contractor, the Authority and the sponsoring State or States may, from time to time, as necessary, revise and develop the Training Plan by mutual agreement, taking into account the shortage of any skills and requirements of the industry in the undertaking of activities in the Area and the training Guidelines.

3. Any mutually agreed modification of or amendment to the Training Plan shall become part of schedule 8 to the exploitation contract.

4. In the case of specific training on Mitigation and the prevention of pollution from the Area, participation of representative of the adjacent coastal State should be ensured.

Section 8

Annual reports and record maintenance

Regulation 38

Annual report

1. A Contractor shall, within 90 Days of the end of each Calendar Year, submit an annual report to the Secretary-General, in such format as may be prescribed from time to time in the relevant Guidelines, covering its activities in the Contract Area and reporting on compliance with the terms of the exploitation contract.

2. Such annual reports shall include:

(a) Details of the Exploitation work carried out during the Calendar Year, including maps, charts and graphs illustrating the work that has been done and the data and results obtained, [reported against] **[noting variance from]** the approved Plan of Work;

(b) The quantity and quality of the Resources [recovered] **[extracted]** during the period and the volume of Minerals and metals [produced] **[recovered]**, marketed and sold during the Calendar Year, reported against the Mining Workplan;

(c) Details of the equipment used to carry out Exploitation, and in operation at the end of the period, **if different from the Plan of Work;**

(d) An annual financial report, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, of the actual and direct Exploitation expenditures, which are the capital expenditures and operating costs of the Contractor in carrying out the programme of activities during the Contractor's accounting year in respect of the Contract Area, together with an annual statement of the computation of payments paid or payable to the Authority, reported against the Financing Plan;

(e) Health and safety information, including details of any accidents or Incidents arising during the period and actions taken in respect of the Contractor's health and safety procedures;

(e)alt. Information on compliance with health, labour and safety standards;

(e)alt bis. Details of any accidents or Incidents arising during the period;

(f) Details of training carried out in accordance with the Training Plan:

(g) The actual results obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against, where applicable, any [criteria, technical Standards and indicators] **[environmental objectives and standards]** pursuant to the **applicable Regional Environmental Management Plan and the Environmental Management and Monitoring Plan**, together with details of any response actions implemented under the plan and the actual costs of compliance with the plan;

(h) A statement that all risk management systems and procedures have been followed and remain in place, together with a report on exceptions and the results of any verification and audit undertaken internally or by independent competent persons **appointed or employed by the Contractor;**

(i) Evidence that insurance is maintained, including the amount of any deductibles and self-insurance, together with the details and amount of any claims made or amounts recovered from insurers during the period;

[j) Details of any changes made in connection with subcontractors engaged by the Contractor during the Calendar Year;**]**

(k) The results of any Exploration activities, including updated data and information on the grade and quality of Resources and reserves identified in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves;

(l) A statement that the Contractor's Financing Plan is adequate for the following period; and

(m) Details of any **[proposed] [significant]** modification to the Plan of Work **[and the reasons for such modifications].**

(2)bis. The Secretariat shall arrange for the effective management of the submitted information in order to overcome existing gaps in knowledge concerning the marine ecosystems including their sensitivity and resilience, the determination of environmental quality standards and appropriate exploitation equipment.

3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted. **To this end, Contractors shall structure the annual reports such that any Confidential Information can clearly be identified and extracted.**

Regulation 39

Books, records and samples

1. A Contractor shall keep a complete and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles, which must include information that fully discloses actual and direct expenditures for Exploitation, including capital expenditures and operating costs and such other information as will facilitate an effective audit of the Contractor's expenditures and costs.

2. A Contractor shall maintain maps, geological, mining and mineral analysis reports, production records, processing records, records of sales or use of Minerals, environmental data, archives and samples and any other data, information and samples connected with the Exploitation activities in accordance with the Authority's data and information management policy.

3. **[To the extent practical,]** a Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, together with biological samples, obtained in the course of Exploitation until the termination of the **[exploitation contract] [Closure Plan]**. Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party.

4. Upon request of the Secretary-General, the Contractor shall deliver to the Secretary-General for analysis a portion of any sample or core obtained during the course of Exploitation activities.

5. A Contractor shall, subject to reasonable notice, permit full access by the Secretary-General to the data, information and samples.

Section 9 Miscellaneous

Regulation 40 Prevention of corruption

1. A Contractor shall not make any gift or reward to any officials, agents or employees or Contractors or subcontractors of the Authority or other individuals operating under the auspices of the Authority to induce or reward such persons for any acts undertaken in accordance with their duties under these regulations.

2. The Contractor acknowledges and agrees that it is subject to the anti-bribery and anti-corruption provisions of the jurisdictions in which the Contractor is a national or by whose nationals it is effectively controlled or of the jurisdiction in which the Contractor is organized or conducts business, and shall conduct its activities under the exploitation contract in accordance with its obligations under such anti-bribery and anti-corruption laws.

Regulation 41 Other Resource categories

1. The Contractor shall notify the Secretary-General if it finds Resources in the Area other than the Resource category to which the exploitation contract relates within 30 Days of its find. **The Secretary-General shall inform the Council about such notification during the next regular session of the Council.**

1alt. The Contractor shall notify the Secretary-General within 30 Days if it finds, within its Contract Area, Resources other than the Resource category to which the exploitation contract relates.

2. The exploration for and exploitation of such finds must be the subject of a separate application to the Authority, in accordance with the relevant Rules of the Authority.

2alt. The exploration for and exploitation of resources referred to in paragraph 1 of this Regulation shall be the subject of a separate application to the Authority.

Regulation 42 Restrictions on advertisements, prospectuses and other notices

No statement shall be made in any prospectus, notice, circular, advertisement, press release or similar document issued by the Contractor, or [to the knowledge] **[with the express or implied permission]** of the Contractor, or in any other manner or through any other medium, claiming or suggesting, whether expressly or by implication, that the Authority has or has formed or expressed an opinion over the commercial viability of Exploitation in the Contract Area.

Regulation 43 Compliance with other laws and regulations

1. Nothing in an exploitation contract shall relieve a Contractor from its lawful obligations under any national law to which it is subject, including the laws of a sponsoring State and flag State.
2. Contractors shall maintain the currency of all permits, licences, approvals, certificates and clearances not issued by the Authority and that may be required to lawfully conduct Exploitation activities in the Area.
3. Contractors shall notify the Secretary-General promptly when a permit, licence, approval, certificate or clearance connected with its activities in the Area is withdrawn or suspended.

Part IV Protection and preservation of the Marine Environment

Section 1 Obligations relating to the Marine Environment

Regulation 44 General obligations

The Authority, sponsoring States and Contractors shall each, as appropriate, plan, implement and modify measures necessary for ensuring [effective protection for the Marine Environment from harmful effects under article 145 of the Convention] [the protection and preservation of the unique Marine Environment, including rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life,] in accordance with the rules, regulations and procedures adopted by the Authority in respect of activities in the Area. To this end, they shall:

(a) [Apply] [Ensure] the precautionary [approach] [principle], [as reflected in principle 15 of the Rio Declaration on Environment and Development] to the assessment and management of risk [of harm] to the protection and preservation of the Marine Environment from exploitation in the Area;

(a)bis. Apply the Ecosystem Approach to the assessment and management of risk of harm to the Marine Environment from Exploitation in the Area;

(b) [Apply] [Ensure] the Best Available Techniques and Best Environmental Practices in carrying out such measures;

(c) Integrate Best Available Scientific Evidence in environmental decision-making, including all risk assessments and management undertaken in connection with environmental assessments, and the management and response measures taken under or in accordance with Best Environmental Practices; and

(d) [Promote] [Ensure] accountability and transparency in the assessment, evaluation and management of Environmental Effects from Exploitation in the Area, including through stakeholder engagement and the timely release of and access to relevant environmental data and information [and opportunities for stakeholder participation].

Regulation 44bis

1. The Authority shall develop Regional Environmental Management Plans in each regional area that is under consideration for the conduct of activities in the Area.

2. The purpose of Regional Environmental Management Plans is to provide region-specific information, measures and procedures in order to ensure effective protection of the Marine Environment in accordance with Article 145 UNCLOS. To this end, REMPs should in particular entail environmental objectives and standards, if appropriate, taking into account cumulative and synergistic effects, spatial planning instruments, such as the determination of Mining Areas, APEIs as well as PRZ and IRZ, and procedures and measures taking into account all relevant human activities. Regional Environmental Management Plans shall be drafted in the form prescribed by the Authority in Annex [IVbis].

3. An application for a Plan of Work shall not be considered by the Commission until and unless a Regional Environmental Management Plan has been adopted

by the Council for the particular area concerned. In the event that an application for a Plan of Work is submitted for an area where no such Regional Environmental Management Plan exists, the drafting of a Regional Environmental Management Plan applicable to the area in concern shall be prioritised and adopted without any undue delay, taking into account Section 2, Article 15 b/c of the 1994 Implementing Agreement.

4. Before the adoption of an REMP by the Council, all potentially concerned States, international and regional competent organisations and all Stakeholders shall be consulted in accordance with the relevant Standards or Guidelines.

5. All Regional Environmental Management Plans shall undergo a review after every six years. In addition, the Council may decide to review any Regional Environmental Management Plan at any time before such a review is due, especially if such review is deemed necessary in the light of new scientific information, or if it is of an opinion that the measures to ensure the effective protection of the Marine Environment prescribed therein are inadequate or ineffective.

Regulation 45

Development of environmental Standards

1. Environmental Standards shall be developed in accordance with regulation 94 and shall include inter alia the following subject matters:

(a) Environmental quality objectives for at least key contaminants of concern in the water column, sediment and tissue and indicators, including on toxicity, biodiversity status, plume density and extent, and sedimentation rates;

(b) Environmental Management and [M][m]onitoring procedures and interpretation of results; and

(c) Environmental Risk Assessment and [M][m]itigation and/or remedial measures.

(d) Baseline data collection;

(e) Scope and content of environmental impact assessments and statements;

(f) Application for a Plan of Work;

(g) Environmental management systems;

(h) Environmental performance guarantees.

2. The Authority shall not approve any Exploitation activities unless the necessary environmental Standards have been adopted.

Regulation 46

Environmental management system

1. A Contractor shall implement and maintain an environmental management system, taking account of the relevant Guidelines.

2. An environmental management system shall:

(a) Be capable of delivering site-specific environmental objectives and Standards in the Environmental Management and Monitoring Plan;

(b) Be capable of cost-effective, independent auditing by recognized and accredited international or national organizations acceptable to the Authority; and

(c) Permit effective reporting to the Authority in connection with environmental performance[.] [; and]

(d) Be in accordance with Good Industry Practice and internationally recognised standards.

Section 2

Preparation of the Environmental Impact Statement and the Environmental Management and Monitoring Plan

Regulation 47

Environmental Impact Statement

Alt. Environmental Impact Assessment

1. The purpose of the Environmental Impact Statement is to document and report the results of the environmental impact assessment. An environmental impact assessment is mandatory. [The environmental impact assessment:]

1bis. The environmental impact assessment shall:

(a) Be informed by relevant baseline data that captures temporal and seasonal variation:

(a) bis [Identifies] Identify, predict[s], evaluate[s] and mitigate[s] the [biophysical] physiochemical and biological physical, chemical, biological, social and other relevant effects of the proposed mining operation;

(b) [Include[s] at the outset a screening and scoping process, which] identifies and prioritizes the main activities and impacts associated with the potential mining operation, in order to focus the [Environmental Impact Statement] assessment on the key environmental issues. [The environmental impact assessment [should] shall] This should be based on the prior testing of equipment and operations in the Mining Area under application and include [an environmental risk assessment] public consultation in various key steps of the process;

(c) Include[s] an impact analysis to describe and predict, among others, the spatial and temporal nature and extent of the Environmental [Effects] risks and impact of the mining operation, including cumulative impacts; and

(d) [Identifies] Identify avoidance and Mitigation measures to manage such effects within acceptable levels, including through the development and preparation of an Environmental Management and Monitoring Plan.

(e) Include evidence of consultation with relevant coastal States in close proximity to the proposed Mining Area;

(f) Identify comments received through public consultation on the environmental impact assessment and how they have been addressed.

(f)bis. Shall be conducted in accordance with the applicable Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.

2. An applicant or Contractor, as the case may be, based on the results of the environmental impact assessment, shall prepare an Environmental Impact Statement in accordance with this regulation.

2alt. Preparation of the environmental impact assessment shall include steps below:

(a) Screening to determine whether an environmental impact assessment is required for the proposed development;

(b) Scoping to identify key environmental and other relevant issues, including potential cumulative impact;

(c) Impact prediction and evaluation using best available scientific results from environmental risk assessments and information from the public consultation;

(d) Mitigation, prevention and management of potential adverse impacts to identify measures to prevent or mitigate significant adverse impacts of a proposed development;

(e) Preparation of Environmental Impact Statement to document and report the results of the assessment;

(f) Environmental Impact Assessment Decision.

3. The Environmental Impact Statement shall be in the form prescribed by the Authority in annex IV to these regulations and shall be:

(a) Inclusive of a prior environmental risk assessment;

(b) Based on the results of the environmental impact assessment;

(c) In accordance with the objectives and measures of the relevant existing regional environmental management plan; and

[(d) Prepared in accordance with the applicable Regulations on Prospecting and Exploration and Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques, based on the results of the consultation conducted in accordance with the relevant Guidelines.]

4. The EIS shall demonstrate that the activity is in accordance with all relevant environmental Standards and with the requirements of the applicable Regional Environmental Management Plan.

Regulation 48

Environmental Management and Monitoring Plan

1. The purpose of an Environmental Monitoring and Management Plan is to manage and confirm that Environmental [Effects] [impacts] meet the environmental quality objectives and standards for the mining operation. The plan will contain any conditions included in the environmental impact assessment decision and will set out commitments and procedures on how the mitigation measures, including pollution control and Mining Discharge in regulations 49 and 50, will be implemented, how the effectiveness of such measures will be monitored, what the management responses will be to the monitoring results and what reporting systems will be adopted and followed.

2. An applicant or Contractor, as the case may be, shall prepare an Environmental Management and Monitoring Plan in accordance with this regulation.

3. The Environmental Management and Monitoring Plan shall cover the main aspects prescribed by the Authority in annex VII to these regulations and shall be:

(a) Based on the environmental impact assessment and the Environmental Impact Statement;

(b) In accordance with the relevant regional **existing** environmental management plan; and

(c) Prepared in accordance with the applicable **Standards and** Guidelines, Good Industry Practice, Best Available Scientific Evidence and Best Available Techniques, and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan.

4. The EMMP shall contain a monitoring programme for at least the first seven years of Exploitation, to be conducted by independent experts and in compliance with the applicable Standards.

4alt. The Contractor shall monitor and assess compliance with the EMMP and publish the results of the assessment in the annual report.

5. The Contractor shall finance all expenses associated with the implementation of this regulation.

Regulation 48bis

1. The purpose of test mining is to ensure that no significant harm is caused by Exploitation activities. Test mining projects shall as a general rule provide evidence that appropriate equipment is available to ensure the effective protection of the Marine Environment in accordance with Article 145. To this end, a Contractor shall conduct test mining, in at least two critical stages, unless Paragraph 5 applies; firstly, when applying for an approval of a Plan of Work in accordance with Part II, and secondly, before Commercial Production shall commence in accordance with Regulation 25.

2. Before applying for an approval of a Plan of Work, a Contractor has to provide evidence to substantiate the required information in accordance with Regulation 7. A test mining study in accordance with Annex [IVter] shall be submitted with the application for the approval of a Plan of Work.

3. Before Commercial Production may commence in accordance with Regulation 25, a Contractor shall provide evidence demonstrating its ability to ensure effective protection of the Marine Environment, in particular, to show that no significant harm to the Marine Environment is likely to occur during the phase of Commercial Production. A test mining study in accordance with Annex [IVter] must be submitted to substantiate this.

4. Contractors should apply for the approval for test mining projects from the Authority in accordance with all relevant Standards and Guidelines. The potential effects of test mining projects shall be assessed in the form of an Environmental Impact Assessment. Potentially affected States, international organisations and relevant Stakeholders shall be consulted in accordance with the relevant Standards and Guidelines.

5. A test mining study pursuant to Paragraph 3 does not have to be submitted if the evidence required pursuant to Paragraph 3 has been demonstrated in the test mining study pursuant to Paragraph 2 or in a test mining study in the context of another approved Plan of Work. The Contractor has to submit relevant information to the LTC. The Commission shall decide whether the submission of a test mining study pursuant to Paragraph 2 is required.

Section 3 Pollution control and management of waste

Regulation 49

Pollution control

A Contractor shall take all necessary measures to [prevent, reduce and control pollution and other hazards to the Marine Environment] [protect and preserve the Marine Environment, including by preventing, reducing and controlling pollution and other hazards] from its activities in the Area, in accordance with the Environmental Management and Monitoring Plan the applicable Regional Environmental Management Plan and the applicable Standards and Guidelines.

Regulation 50

Restriction on Mining Discharges

1. A Contractor shall not dispose, dump or discharge into the Marine Environment any Mining Discharge, except where such disposal, dumping or discharge is permitted in accordance with:

(a) The assessment framework for Mining Discharges as set out in the Guidelines; and

(b) The Environmental Management and Monitoring Plan.

2. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is carried out for the safety of the vessel or Installation or the safety of human life, provided that all reasonable measures are taken to minimize the likelihood of Serious Harm to the Marine Environment, and such disposal, dumping or discharge shall be reported forthwith to the Authority. In case of such Mining Discharge occurred, the Contractor shall take necessary measures in accordance with regulation 34(2).

3. The disposal, dump or discharge into the Marine Environment of any Mining Discharge that is not in accordance with regulation 50(1) or 50(2) is considered an Unauthorized Mining Discharge and constitutes a Notifiable Event under Appendix 1.

4. Nothing in these Regulations shall be interpreted in a manner that undermines the obligations of the Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matters, 1972 and the 1996 Protocol thereto.

Section 4

Compliance with Environmental Management and Monitoring Plans and performance assessments

Regulation 51

Compliance with the Environmental Management and Monitoring Plan

A Contractor shall, in accordance with the terms and conditions of its Environmental Management and Monitoring Plan and these regulations:

(a) Monitor and report annually under regulation 38 (2) (g) on the Environmental Effects of its activities on the Marine Environment, and manage all such effects as an integral part of its Exploitation activities as set out in the Standards referred to in regulation 45;

(b) Implement all applicable Mitigation and management measures to protect the Marine Environment, as set out in the Standards referred to in regulation 45; and

(c) Maintain the currency and adequacy of the Environmental Management and Monitoring Plan during the term of its exploitation contract in accordance with

Best Available Techniques and Best Environmental Practices and taking account of the relevant Guidelines.

Regulation 52

Performance assessments of the Environmental Management and Monitoring Plan

1. A Contractor shall conduct performance assessments of the Environmental Management and Monitoring Plan to assess:

(a) The compliance of the mining operation with the plan; **[and]**

(b) The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto; **and**

(c) The compliance of the plan with the applicable Regional Environmental Management Plan.

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan **[which shall be no less than 24 months] [and shall occur at least annually];**

3. A Contractor shall compile and submit a performance assessment report to the Secretary-General in accordance with, and in the format set out in, the relevant Guidelines.

4. The Commission shall review a performance assessment report at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. The Secretary-General shall make public the report and the findings and recommendations resulting from the Commission's review.

5. Where the Commission considers the performance assessment undertaken by the Contractor to be unsatisfactory, taking account of the Guidelines or the conditions attaching to the Environmental Management and Monitoring Plan, the Commission may require the Contractor to:

(a) Repeat the whole or relevant parts of the performance assessment, and revise and resubmit the report;

(b) Submit any relevant supporting documentation or information requested by the Commission; or

(c) Appoint, at the cost of the Contractor, an independent competent person to conduct the whole or part of the performance assessment and to compile a report for submission to the Secretary-General and review by the Commission.

[6. Where a Contractor has previously submitted two unsatisfactory reports and the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor in accordance with the Guidelines, the Commission may procure, at the cost of the Contractor, an independent competent person to conduct the performance assessment and to compile the report.]

7. Where, as a result of paragraphs 5 and 6 above, a revised assessment and report is produced, paragraph 4 above shall apply to the revised assessment.

8. Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor has failed to comply with the terms and conditions of its Environmental Management and Monitoring Plan or that the plan is determined to be inadequate in any material respect, the Secretary-General shall:

(a) Issue a compliance notice under regulation 103; or

(b) Require the Contractor to deliver a revised Environmental Management and Monitoring Plan, taking into account the findings and recommendations of the Commission. A revised plan shall be subject to the process under regulation 11.

9. The Commission shall report annually to the Council on such performance assessments and any action taken pursuant to paragraphs 5 to 8 by it or the Secretary-General. Such report shall include any relevant recommendations for the Council's consideration.

Regulation 53

Emergency Response and Contingency Plan

1. A Contractor shall maintain:

(a) The currency and adequacy of its Emergency Response and Contingency Plans based on the identification of potential Incidents and in accordance with Good Industry Practice, Best Available Techniques, Best Environmental Practices and the applicable standards and Guidelines **and shall be tested at least annually**; and

(b) Such resources and procedures as are necessary for the prompt execution and implementation of the Emergency Response and Contingency Plans and any Emergency Orders issued by the Authority.

2. Contractors, the Authority and sponsoring States shall consult together, **with relevant adjacent coastal States** as well as with other States and organizations which appear to have an interest, in relation to the exchange of knowledge, information and experience relating to Incidents, using such knowledge and information to prepare and revise standards and operating guidelines to control hazards throughout the mining life cycle, and shall cooperate with and draw on the advice of other relevant international organizations.

3. Following an Incident, Contractors must submit a detailed report on how the agreed plan was complied with, including, among other aspects, expenses incurred, responsibilities and updating of the plan if it necessary.

Section 5

Environmental Compensation Fund

Regulation 54

Establishment of an Environmental Compensation Fund

Alt. Establishment of Environmental Funds

1. The Authority hereby establishes the Environmental Compensation Fund (“the Fund”) **and the Environmental Research and Training Fund (“the ERTF”)**.

2. The rules and procedures of the Fund **and ERTF** will be established by the Council on the recommendation of the Finance Committee **in accordance with article 140(2) of UNCLOS**.

3. The Secretary-General shall, within 90 Days of the end of a Calendar Year, prepare [an] audited statement[s] of the income and expenditure of the Fund **and** for **the ERTF** circulation to the members of the Authority.

Regulation 55

Purpose of the Environmental Compensation Fund

The main purposes of the Fund will include:

(a) The funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage [to the Area] arising from activities in the

Area, **to mitigate, remediate, rehabilitate and compensate for damage to marine ecosystems in the maritime zones of coastal States** the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be;

[(b) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;]

(b)bis. The promotion of the participation of vulnerable communities and relevant Stakeholders in decisions about disbursement of funds;

[(c) Education and training programmes in relation to the protection of the Marine Environment **with particular regards to vulnerable communities and relevant Stakeholders;**]

[(d) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area; and]

(e) The restoration and rehabilitation of the Area **as well as of the maritime zones of coastal States** when technically and economically feasible and supported by Best Available Scientific Evidence.

Regulation 55alt1

The purpose of the Fund will be the funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage to the Area arising from activities in the Area, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be.

Regulation 55alt2

The main purpose of the Fund is the funding of the implementation of any necessary measures designed to prevent, limit or remediate any damage to the Area arising from activities in the Area, the costs of which cannot be recovered from a Contractor or sponsoring State, as the case may be, including the restoration and rehabilitation of the Area when technically and economically feasible and supported by Best Available Scientific Evidence.

Regulation 55alt2 bis

Purpose of the ERTF

The main purposes of the ERTF include:

(a) The promotion of research into methods of marine mining engineering and practice by which environmental damage or impairment resulting from Exploitation activities in the Area may be reduced;

(b) Education and training programmes in relation to the protection of the Marine Environment; and

(c) The funding of research into Best Available Techniques for the restoration and rehabilitation of the Area.

Regulation 56 Funding

The Fund will consist of the following monies **paid by Contractors:**

(a) The prescribed percentage or amount of fees paid to the Authority **by sponsoring States and Contractors;**

(b) The prescribed percentage of any penalties paid to the Authority;

(c) The prescribed percentage of any amounts recovered by the Authority by negotiation or as a result of legal proceedings in respect of a violation of the terms of an exploitation contract;

(d) Any monies paid into the Fund at the direction of the Council, based on recommendations of the Finance Committee; and

(e) Any income received by the Fund from the investment of monies belonging to the fund.

Part V

Review and modification of a Plan of Work

Regulation 57

Modification of a Plan of Work by a Contractor

1. A Contractor [shall] **[may]** not modify the Plan of Work annexed to an exploitation contract **without prior consent of the Commission,** [except] in accordance with this regulation.

2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the [Guidelines] **[Standard]**. If the Secretary-General considers that the proposed modification [constitutes a Material Change,] **[may constitute a Material Change, he or she shall submit such matter to the Commission for consideration. If the Commission considers that the proposed modification constitutes a Material Change,]** the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor. **If the Secretary-General considers that the proposed modification does not constitute a Material Change, the Secretary-General shall report the main reasons for this finding to the Commission. If the Commission disagrees with the determination of the Secretary-General, the Commission shall inform the Council and provide a recommendation to the Council to take the final decision. Upon the Council's approval of a Material Change to the Plan of Work, the Secretary-General or duly authorized representative and the designated representative or the authority designated by the Contractor shall sign [the relevant changes to the Contract/written documents with the changes to the Contract.**

2alt. Major variations will be brought to the attention of the Commission through the annual reporting cycle outlined in regulation 38.

3. Where the proposed modification under paragraph 2 above relates to a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, such plans shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.

3alt. If the proposed modification relates to a Material Change in the Environmental Management and Monitoring Plan or Closure Plan, the Contractor shall notify the Secretary-General. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission, before such Material Change is implemented by the Contractor.

4. The Secretary-General, **based on the annual reporting process,** may propose to the Contractor a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. [After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Commission **and the Council of this** at [its] **[their]** next meeting].

Regulation 58

Review of activities under a Plan of Work

1. [At intervals not exceeding five years from the date of signature of the exploitation contract, or] [where] **[Where]**, in the opinion of the Secretary-General,

[there have occurred] any of the following events or changes of circumstance **have occurred:**

[(a) A proposed Material Change in the implementation of the Plan of Work;]

(a)bis Identification of a new environmental risk or a significant change to existing risk calculations;

(b) Any Incident;

(b)bis An indication that the cumulative impacts of the Exploitation activities exceed any environmental objectives or thresholds as established under the applicable Regional Environmental Management Plan;

(c) Recommendations for improvement in procedures or practices following an inspection report under regulation 100;

(d) A performance assessment which requires action under regulation 52 (8);

[(e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;]

[(f) Changes in Best Available Techniques;]

(g) Changes in Best Available Scientific Evidence; or

(h) [Operational management changes, including changes to subcontractors,] the Secretary-General may review with the Contractor the Contractor's activities under the Plan of Work, and shall discuss whether any modifications to the Plan of Work are necessary or desirable.

2. A review of activities shall be undertaken in accordance with the relevant regulations, Standards and Guidelines. The Secretary-General or the Contractor may invite the sponsoring State or States **and relevant adjacent coastal State or States** to participate in the review of activities.

3. The Secretary-General shall report on each review to the Commission and Council, and the sponsoring State or States. [Where, as a result of a review, the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3).]

4. For the purpose of the review, the Contractor shall provide all information required by the Secretary-General in the manner and at the times the Secretary-General requests.

5. Nothing in this regulation shall preclude the Secretary-General or the Contractor from making a request to initiate discussions regarding any matter connected with the Plan of Work, exploitation contract or the activities under the exploitation contract in cases other than those listed in paragraph 1 above.

6. The Secretary-General shall make publicly available the findings and recommendations resulting from a review of activities under this regulation.

Part VI Closure plans

Regulation 59 Closure Plan

1. A Closure Plan shall set out the responsibilities and actions of a Contractor for the decommissioning and closure of activities in a Mining Area, including [the post-closure] management and monitoring of residual [and natural] Environmental Effects. Closure also includes a temporary suspension of mining activities.

2. The objectives of a Closure Plan are to ensure that:

(a) The closure of mining activities is a process that is incorporated into the mining life cycle and is conducted in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques;

(b) At the date of cessation or suspension of mining activities, a management and monitoring plan is in place for the period prescribed in a Closure Plan;

(c) The risks relating to Environmental Effects are quantified, assessed and managed, which includes the gathering of information relevant to closure or suspension;

(d) The necessary health and safety requirements are complied with;

(e) Any residual negative Environmental Effects are identified and quantified, and management responses are considered, including plans for further Mitigation or remediation where appropriate;

(f) Any restoration or rehabilitation commitments will be fulfilled in accordance with predetermined criteria or standards; and

(fbis. Requirements regarding the removal of all Installations and equipment from the Mining Area are addressed; and

(g) The mining activities are closed or suspended efficiently and cost-effectively.

3. The Closure Plan shall cover the main aspects prescribed by the Authority in annex VIII to these regulations.

4. A Contractor shall maintain the currency and adequacy of its Closure Plan in accordance with Good Industry Practice, Best Environmental Practices, Best Available Techniques, **Best Available Scientific Evidence** and the relevant Guidelines.

5. The Closure Plan shall be **reviewed annually and** updated each time there is a Material Change in a Plan of Work, [or, in cases where no such change has occurred, every five years,] and be finalized in accordance with regulation 60 (1).

Regulation 60 Final Closure Plan: cessation of production

1. A Contractor shall, at least [12] [24] months prior to the planned end of Commercial Production, or as soon as is reasonably practicable in the case of any unexpected cessation, submit to the Secretary-General, for the consideration of the Commission, a final Closure Plan, if such cessation requires a Material Change to the Closure Plan, **determined in accordance with the procedures established in Regulation 57** taking into account the results of monitoring and data and

information gathered during the exploitation phase and the applicable Regional Environmental Management Plan.

2. The Commission shall examine the final Closure Plan at its next meeting, provided that it has been circulated at least ~~[30]~~ **[60]** Days in advance of the meeting.

3. If the Commission determines that the final Closure Plan meets the requirements of regulation 59, it shall recommend approval of the final Closure Plan to the Council.

4. If the Commission determines that the final Closure Plan does not meet the requirements of regulation 59, the Commission shall require amendments to the final Closure Plan as a condition for approval of the plan.

5. The Commission shall give the Contractor written notice of its decision under paragraph 4 above and provide the Contractor with the opportunity to make representations or to submit a revised final Closure Plan for the Commission's consideration, within 90 Days of the date of notification to the Contractor.

6. At its next available meeting, the Commission shall consider any such representations made or revised final Closure Plan submitted by the Contractor when preparing its report and recommendation to the Council, provided that the representations have been circulated at least 30 Days in advance of that the Commission meeting.

7. The Commission shall review the amount of the Environmental Performance Guarantee provided under regulation 26.

8. The Council shall consider the report and recommendation of the Commission relating to the approval of the final Closure plan.

Regulation 61

Post-closure monitoring

1. A Contractor shall implement the final Closure Plan in accordance with the conditions of its implementation and shall report to the Secretary-General on the progress of such implementation, including the results of monitoring under paragraph 2 below, as set out in the final Closure Plan.

2. The Contractor shall continue to monitor the Marine Environment for such period after the cessation of activities, as set out in the final Closure Plan for the duration provided by the relevant Guidelines.

3. The Contractor shall conduct a final performance assessment and submit a final performance assessment report in accordance with the Guidelines to the Secretary-General to ensure that the closure objectives as described in the final Closure Plan have been met. Such report shall be reviewed by the Commission at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting.

Part VII

Financial terms of an exploitation contract

Section 1

General

Regulation 62

Equality of treatment

The Council shall, based on the recommendations of the Commission and the Finance Committee, apply the provisions of this Part in a uniform and non-discriminatory manner, and shall ensure equality of financial treatment and comparable financial obligations for Contractors.

Regulation 63

Incentives

1. The Council may, taking into account the recommendations of the Commission and the Finance Committee, provide for incentives, including financial incentives, on a uniform and non-discriminatory basis, to Contractors to further the objectives set out in article 13 (1) of annex III to the Convention based on the principles provided in paragraph 1(a) of section 6 and paragraph 1(a) of section 8 of the annex to the Agreement.

2. Furthermore, the Council may provide incentives, including financial incentives, to those Contractors entering into joint arrangements with the Enterprise under article 11 of annex III to the Convention, and developing States or their nationals, to stimulate the transfer of technology thereto and to train the personnel of the Authority and of developing States.

3. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

4. Any incentives shall be fully compatible with the policies and principles under Regulation 2.

Section 2

Liability for and determination of royalty

Regulation 64

Contractor shall pay royalty

A Contractor, from the date of commencement of Commercial Production, shall pay a royalty in respect of the mineral-bearing ore sold or removed without sale from the Contract Area as determined in appendix IV to these regulations pursuant to Paragraph 1 of section 8 of the annex to the Agreement.

Regulation 65

Secretary-General may issue Guidelines

1. The Secretary-General may, from time to time, issue Guidelines in accordance with regulation 95 in respect of the administration and management of royalties prescribed in this Part.

2. The Secretary-General shall consider all requests for the clarification of any Guidelines issued under paragraph 1 above, or on any other matter connected with the administration and management of a royalty and its payment.

Section 3

Royalty returns and payment of royalty

Regulation 66

Form of royalty returns

A royalty return lodged with the Secretary-General shall be in the form prescribed by the Guidelines and signed by the Contractor's designated official.

Regulation 67

Royalty return period

A royalty return period for the purposes of this Part is a half-year return period, from:

- (a) 1 January to 30 June; and
- (b) 1 July to 31 December.

Regulation 68

Lodging of royalty returns

1. A Contractor shall lodge with the Secretary-General a royalty return for each Mining Area not later than 90 Days after the end of the royalty return period in which the date of commencement of Commercial Production occurs, and thereafter not later than 90 Days after the end of each subsequent royalty return period for the duration of the exploitation contract.

2. In connection with any joint venture arrangement or a consortium of Contractors, one royalty return shall be submitted by the joint venture or consortium.

3. A royalty return may be lodged electronically.

Regulation 69

Error or mistake in royalty return

A Contractor shall notify the Secretary-General promptly of any error in calculation or mistake of fact in connection with a royalty return or payment of a royalty.

Regulation 70

Payment of royalty shown by royalty return

1. A Contractor shall pay the royalty due for a royalty return period on the Day the royalty return is required to be lodged.

2. Payments to the Authority **[may] [shall]** be made in United States dollars or other foreign currency which is freely convertible.

3. All payments made to the Authority shall be made **[gross] [net]** and shall be free of any deductions, transmission fees, levies or other charges.

4. The Council may approve the payment of any royalty due by way of instalment where special circumstances exist that justify payment by instalment **taking account of rules, regulations and procedures of the Authority that**

provide for incentives, on a uniform and non-discriminatory basis, to Contractors.

Regulation 71

Information to be submitted

1. A royalty return shall include the following information for each royalty return period:

(a) The quantity in wet metric tons of mineral-bearing ore recovered from each Mining Area;

(b) The quantity [and value] by mineral in wet metric tons of the mineral-bearing ore shipped from the Mining Area;

(c) The value and the basis of the valuation of the mineral-bearing ore sold or removed without sale from the Mining Area, as verified by a suitably qualified person and supported by a representative chemical analysis of the ore by a certified laboratory;

(d) Details of all contracts and sale or exchange agreements relating to the mineral-bearing ore sold or removed without sale from the Contract Area; and

(e) A calculation of the royalty payable in accordance with section 3, including any adjustment made to the prior royalty return period and a declaration signed by a designated official of the Contractor that the royalty return is accurate and correct.

2. In respect of a final royalty return period ending on the date of expiry, surrender or termination of the exploitation contract, the Contractor shall provide:

(a) A final calculation of the royalty payable;

(b) Details of any refund or overpayment of royalty claimed; and

(c) The quantity and value of all closing stocks of the mineral-bearing ore.

3. Within 90 Days from the end of a Calendar Year, the Contractor shall provide the Secretary-General and the sponsoring State or States with a statement from an auditor or certified independent accountant that the royalty calculation for that Calendar Year:

(a) Is based on proper accounts and records properly kept and is in agreement with those accounts and records; and

(b) Complies with these regulations and is accurate and correct.

Regulation 72

Authority may request additional information

The Secretary-General may, by notice to a Contractor who has lodged a royalty return, request the Contractor to provide, by the date stated in the notice, information to support the matters stated in the royalty return.

Regulation 73

Overpayment of royalty

1. Where a royalty return shows any overpayment of royalties, a Contractor may apply to the Secretary-General to request a refund of any such overpayment.

2. Where no such request is received by the Secretary-General within 90 Days of the due date of submission of the relevant royalty return, the Authority shall carry

forward any overpayment and credit it against a future royalty amount payable under this Part.

3. Any request to reduce a royalty-related amount payable by a Contractor must be made within five years after the Day the relevant royalty return was lodged with the Authority.

4. Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount **in ... Days** provided he or she determines that such refund is properly due. The Secretary-General may request, and the Contractor shall provide, such additional information or confirmation, as he or she considers necessary to determine that such refund is correct and due to a Contractor.

Section 4

Records, inspection and audit

Regulation 74

Proper books and records to be kept

1. A Contractor shall keep and maintain, at a place agreed by the Contractor and the Secretary-General, complete and accurate records relating to the Minerals recovered in order to verify and support all returns or any other accounting or financial reports required by the Authority in relation to Exploitation.

2. The Contractor shall prepare such records in conformity with internationally accepted accounting principles that verify, in connection with each Mining Area, inter alia:

(a) Details of the quantity and grade of the Minerals recovered from each Mining Area;

(b) Details of sales, shipments, transfers, exchanges and other disposals of the Minerals from the Mining Area, including the time, destination, value and basis of valuation and the quantity and grade of each sale, shipment, transfer, exchange or other disposal;

(c) Details of all eligible capital expenditure and liabilities by category of expenditure and liability incurred in each Mining Area; and

(d) Details of all revenues and operating costs **associated with activities in the Mining Area.**

3. A Contractor shall supply and file such records at such times as may be required by the Authority under these regulations and within 60 Days of the receipt of any such request from the Secretary-General.

4. A Contractor shall maintain all records and make such records available for inspection and audit under regulation 75.

Regulation 75

Audit and inspection by the Authority

1. The Secretary-General may audit the Contractor's records.

2. Any such audit shall be undertaken at the Authority's sole cost and shall be performed by an Inspector in accordance with Part XI of these regulations.

3. An Inspector may, in connection with a liability for a royalty payment:

(a) Inspect the mining and on-board processing facility with a view to verifying the accuracy of the equipment measuring the quantity of Mineral ore sold or removed without sale from the Contract Area;

(b) Inspect, audit and examine any documents, papers, records and data available at the Contractor's offices or on-board any mining vessel or Installation;

(c) Require any duly authorized representative of the Contractor to answer any questions in connection with the inspection; and

(d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the inspection and provide a Contractor with a list of such copies or extracts.

4. The Contractor shall make available to an Inspector such financial records and information contemplated as reasonably required by the Secretary-General to determine compliance with this Part.

5. Members of the Authority, in particular a sponsoring State or States, shall, to the best of their abilities, cooperate with and assist the Secretary-General and any Inspector in the carrying out of any audit under this regulation, and shall facilitate access to the records of a Contractor by an Inspector and assist in the exchange of information relevant to a Contractor's obligations under this Part.

Regulation 76

Assessment by the Authority

1. Where the Secretary-General so determines, taking into account the relevant guidance provided by the Council and following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the Secretary-General may, by written notice to a Contractor, request any additional information that the Secretary-General considers reasonable in the circumstances, including the report of an auditor.

2. A Contractor shall provide such information requested by the Secretary-General within 60 Days of the date of such request, together with any further information the Contractor requires the Secretary-General to take into consideration.

3. The Secretary-General may, within 60 Days of the expiry of the period prescribed in paragraph 2 above, and after giving due consideration to any information submitted under paragraph 2, make an assessment of any royalty liability that the Secretary-General considers ought to be levied in accordance with this Part.

4. The Secretary-General shall provide the Contractor with written notice of any proposed assessment under paragraph 3 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall confirm or revise the assessment made under paragraph 3 above.

5. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 4.

6. Except in cases of fraud or negligence, no assessment may be made under this regulation after the expiration of 6 years from the date on which the relevant royalty return is lodged.

Section 5

Anti-avoidance measures

Regulation 77

General anti-avoidance rule

1. Where the Secretary-General reasonably considers that a Contractor has entered into any scheme, arrangement or understanding or has undertaken any steps which, directly or indirectly:

(a) Result in the avoidance, postponement or reduction of a liability for payment of a royalty under this Part;

(b) Have not been carried out for bona fide commercial purposes; or

(c) Have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for payment of a royalty; then the Secretary-General shall determine the liability for a royalty as if the avoidance, postponement or reduction of such liability had not been carried out by the Contractor and in accordance with this Part.

2. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall determine the liability for a royalty for the original or revised amount.

3. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 2.

Regulation 78

Arm's-length adjustments

1. For the purposes of this regulation:

(a) "Arm's length", in relation to contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not related parties; and

(b) "Arm's-length value", in relation to costs, prices and revenues, means the value that a willing buyer and willing seller, who are not related parties, would agree is fair under the circumstances.

2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm's-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Secretary-General **on the basis of a recommendation by the Finance Committee** may adjust the value of such costs, prices and revenues to reflect an arm's-length value in accordance with internationally accepted principles.

2alt1. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm's-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Council may propose to adjust the value of such costs, prices and revenues to reflect an arm's-length value, taking into account the recommendations of the Commission and the Finance Committee, in accordance with internationally accepted principles.

2alt2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm's-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Secretary-General may make recommendations to the

Commission or the Finance Committee on the adjustment of the value of such costs, prices and revenues.

3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice.

4. The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with Finance Committee. The Council shall decide the value of relevant costs, prices and revenues based on the recommendation. The Contractor may take necessary measures in accordance with regulation 106 in case it is not satisfied with the decision of the Council.

Section 6 Interest and penalties

Regulation 79 Interest on unpaid royalty

Where any royalty or other amount levied under this Part remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated [by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable] **[in accordance with Appendix IV]**.

Regulation 80 Monetary penalties

Alt. Monetary penalties and suspension or termination of exploitation contract

Subject to regulation 103 [(6)], **and depending on the seriousness of the breach,** the Council may impose a monetary penalty **or suspend or terminate the exploitation contract** in respect of a violation [under this Part] **[of the contract]**.

Section 7 Review of payment mechanism

Regulation 81 Review of system of payments

1. The system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement, **consistent with Articles 154, 160(2) and 162(2)(o) of the Convention, and unless otherwise decided by the Council,** shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area.

2. The Council, based on the recommendations of the Commission, and in consultation with Contractors, may revise the system of payments in the light of changing circumstances and following any review under paragraph 1 above, **taking into account of the economic viability of the project** save that any revision shall

only apply to existing exploitation contracts by agreement between the Authority and the Contractor.

Regulation 82

Review of rates of payments

1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.

2. The Council, based on the recommendations of the Commission and in consultation with Contractors, may adjust the rates of payments in the light of such recommendations and consultation, **taking into account of the economic viability of the project** save that any adjustment to the rates of payments may only apply to existing exploitation contracts from the end of the second period of Commercial Production reflected in appendix IV to these regulations.

3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the applicable royalty rate under appendix IV and the manner and basis of the calculation of a royalty.

Section 8

Payments to the Authority

Regulation 83

Recording in Seabed Mining Register

1. All payments made by the Contractor to the Authority under this Part are non-confidential.

2. All payments received by the Authority from Contractors shall be recorded in the Seabed Mining Register.

Part VIII

Annual, administrative and other applicable fees

Section 1

Annual fees

Regulation 84

Annual reporting fee

1. A Contractor shall pay to the Authority, from the effective date of an exploitation contract and for the term of the exploitation contract and any renewal thereof, an annual reporting fee as determined by a decision of the Council from time to time, based on the recommendation of the Finance Committee.
2. The annual reporting fee is due and payable to the Authority at the time of submission of the Contractor's annual report under regulation 38.
3. Where the effective date is part way through a Calendar Year, the first payment shall be prorated and made within 30 Days after the effective date of an exploitation contract.

Regulation 85

Annual fixed fee

1. A Contractor shall pay an annual fixed fee from the date of commencement of Commercial Production in a Contract Area. The amount of the fee shall be established by the Council as required under paragraph (1) (d) of section 8 of the annex to the Agreement.
2. The annual fixed fee is due and payable to the Authority within 30 Days of the commencement of each Calendar Year [at the rate prescribed by the Council under paragraph 2 above.] Where an annual fixed fee remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.
3. Where the date of commencement of Commercial Production occurs part way through a Calendar Year, a prorated annual fixed fee shall become due and payable to the Authority within 30 Days of such commencement date.
4. In any Calendar Year, the annual fixed fee may be credited against any royalty or other amount payable under Part VII of these regulations.

Section 2

Fees other than annual fees

Regulation 86

Application fee for approval of a Plan of Work

1. An applicant for the approval of a Plan of Work shall pay an application fee in the amount specified in appendix II.
2. If the administrative costs incurred by the Authority in processing an application are less than the fixed amount in appendix II, the Authority shall refund the difference to the applicant. If the administrative costs incurred by the Authority in processing an application are more than the fixed amount, the applicant or

Contractor shall pay the difference to the Authority, provided that any additional amount to be paid by the applicant or Contractor shall not exceed 10 per cent of the fixed fee specified in appendix II.

3. Taking into account any criteria established for this purpose by the Finance Committee, the Secretary-General shall determine the amount of such differences as indicated in paragraph 2 above, and notify the applicant or Contractor of its amount. The notification shall include a statement of the expenditure incurred by the Authority. The amount due must be paid by the applicant or reimbursed by the Authority within 90 Days of the effective date of the exploitation contract.

Regulation 87
Other applicable fees

A Contractor shall pay other prescribed fees in respect of any matter specified in appendix II, and in accordance with the applicable regulation.

Section 3
Miscellaneous

Regulation 88
Review and payment

1. The Council shall review and determine on a regular basis the amount of each of the annual, processing and other applicable administrative fees specified in appendix II in order to ensure that they cover the Authority's expected administrative costs for the service provided.

2. Except as provided for in this Part, fees will be a fixed amount expressed in United States dollars [or its equivalent in a freely convertible currency,] and are to be paid in full at the time of the submission of the relevant application, request, document or other event as specified in appendix II.

3. The Secretary-General shall not process any application until the applicable fee under appendix II has been paid.

4. Fees paid under this Part are not refundable upon the withdrawal, rejection or refusal of an application.

Part IX Information-gathering and handling

Regulation 89

Confidentiality of information

1. [There shall be a presumption that any] **[All]** data and information regarding the Plan of Work, exploitation contract, its schedules and annexes or the activities taken under the exploitation contract **[are] [shall be]** public, other than Confidential Information.

2. “Confidential information” means:

(a) Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;

(b) Data and information relating to personnel matters, the health records of individual employees or other documents in which employees have a reasonable expectation of privacy, and other matters that involve the privacy of individuals;

(c) Data and information which have been categorized as Confidential Information by the Council; and

(d) Data and information designated by the Contractor as Confidential Information at the time it was disclosed to the Authority, provided that, subject to paragraph 5 below, such designation is deemed to be well founded by the Secretary-General on the basis that there would be substantial risk of serious or unfair economic prejudice if the data and information were to be released;

[3. “Confidential information” does not mean or include data and information that:

(a) Are generally known or publicly available from other sources;

(b) Have been previously made available by the owner to others without an obligation concerning its confidentiality;

(c) Are already in the possession of the Authority with no obligation concerning its confidentiality;

(d) Are required to be disclosed under the Rules of the Authority to protect the Marine Environment or human health and safety;

(e) Are necessary for the formulation by the Authority of rules, regulations and procedures concerning the protection and preservation of the Marine Environment and safety, other than equipment design data;

(f) Relate to the protection and preservation of the Marine Environment, **[provided that] [unless]** the Secretary-General may agree that such information is regarded as Confidential Information for a reasonable period where there are bona fide academic reasons for delaying its release;

(f)alt. Relate to the protection and preservation of the Marine Environment, provided that the Secretary-General may designate such information as Confidential Information for a reasonable period, subject to such conditions as may be appropriate, where the Commission agrees that there are bona fide academic reasons for delaying its release on the terms proposed by the Secretary-General and the decision including the reasons are reported to Council;

or

(g) Are an award or judgment in connection with activities in the Area (save in relation to any Confidential Information contained in such award or judgment which may be redacted);

or where:

(h) The Contractor to which the data and information relates has given prior written consent to its disclosure; or

(i) The area to which the data and information relates is no longer covered by an exploitation contract; provided that following the expiration of a period of 10 years after it was passed to the Secretary-General, Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor and the Secretary-General **in accordance with the relevant Guidelines.** and save any data and information relating to personnel matters under paragraph 2 (b) above.]

4. Confidential Information will be retained by the Authority and the Contractor in strictest confidence in accordance with regulation 90 and shall not be disclosed to any third party without the express prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed, save that Confidential Information may be used by the Secretary-General and staff of the Authority's secretariat, as authorized by the Secretary-General, and by members of the Commission as necessary for and relevant to the effective exercise of their powers and functions.

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary-General the Information or any part of it as Confidential Information. If the Secretary-General objects to such designation within a period of 30 Days, the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation. During the consultations, the Secretary-General shall take into account any relevant policy guidance from the Council. Any dispute arising as to the nature of the data and information shall be dealt with in accordance with Part XII of these regulations.

6. Nothing in these regulations shall affect the rights of a holder of intellectual property.

Regulation 90

Procedures to ensure confidentiality

1. The Secretary-General shall be responsible for maintaining the confidentiality of all Confidential Information and shall not, except with the prior written consent of a Contractor, release such information to any person external to the Authority. To ensure the confidentiality of such information, the Secretary-General shall establish procedures, consistent with the provisions of the Convention, governing the handling of Confidential Information by members of the Secretariat, members of the Commission and any other person participating in any activity or programme of the Authority. Such procedures shall include:

(a) The maintenance of Confidential Information in secure facilities and the development of security procedures to prevent unauthorized access to or removal of such information; and

(b) The development and maintenance of a classification, log and inventory system of all written information received, including its type and source and the routing from the time of receipt until final disposition.

2. A person who is authorized pursuant to these regulations to access Confidential Information shall not disclose such information except as permitted under the Convention and these regulations. The Secretary-General shall require any person who is authorized to access Confidential Information to make a written declaration witnessed by the Secretary-General or duly authorized representative to the effect that the person so authorized:

(a) Acknowledges his or her legal obligation under the Convention and these regulations with respect to the non-disclosure of Confidential Information; and

(b) Agrees to comply with the applicable regulations and procedures established to ensure the confidentiality of such information.

3. The Commission shall protect the confidentiality of Confidential Information submitted to it pursuant to these regulations or a contract issued under these regulations. In accordance with the provisions of article 163 (8), of the Convention, members of the Commission shall not disclose or use, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their duties for the Authority.

4. The Secretary-General and staff of the Authority shall not disclose or use, even after the termination of their functions with the Authority, any industrial secret, proprietary data which are transferred to the Authority in accordance with article 14 of annex III to the Convention or any other Confidential Information coming to their knowledge by reason of their employment with the Authority.

5. Taking into account the responsibility and liability of the Authority pursuant to article 22 of annex III to the Convention, the Authority may take such action as may be appropriate against any person who, by reason of his or her duties for the Authority, has access to any Confidential Information and who is in] breach[es] any of the obligations relating to confidentiality contained in the Rules of the Authority. In the case of a breach of the obligations relating to confidentiality, the Authority shall notify the relevant Contractor and Sponsoring State.

Regulation 91

Information to be submitted upon expiration of an exploitation contract

1. Upon expiration of an exploitation contract, [T][t]he Contractor shall transfer to the Authority within 90 Days all data and information that are required for the effective exercise of the powers and functions of the Authority in respect of the Contract Area, in accordance with the provisions of this regulation and the Guidelines.

2. Upon termination of an exploitation contract, the Contractor and the Secretary-General shall consult together and, taking into account the Guidelines, the Secretary-General shall specify the data and information to be submitted to the Authority within 90 Days.

Regulation 92

Seabed Mining Register

1. The Secretary-General shall establish, maintain and publish a Seabed Mining Register in accordance with the Standards and Guidelines. Such register shall contain:

(a) The names of the Contractors and the names and addresses of their designated representatives;

(b) The applications made by the various Contractors and the accompanying documents submitted in accordance with regulation 7 **including any revisions, as well as any non-confidential parts of annual reports and the results of monitoring and test mining projects;**

(c) The terms of the various exploitation contracts in accordance with regulation 17;

(d) The geographical extent of Contract Areas and Mining Areas to which each relate;

(e) The category of Mineral Resources to which each relate;

(f) All payments made by Contractors to the Authority under these regulations;

(g) Any encumbrances regarding the exploitation contract made in accordance with regulation 22;

(h) Any instruments of transfer; and

(i) Any other details which the Secretary-General considers appropriate (save Confidential Information).

2. The Seabed Mining Register shall be publicly available on the Authority's website.

Part X

General procedures, Standards and Guidelines

Regulation 93

Notice and general procedures

1. For the purpose of this regulation:

(a) “Communication” means any application, request, notice, report, consent, approval, waiver, direction or instruction required or made under these regulations; and

(b) “Designated representative” means the person so named on behalf of a Contractor on the Seabed Mining Register.

2. Any communication shall be made by the Secretary-General or by the designated representative of the applicant or Contractor, as the case may be, in writing.

3. Service of any communication must be made:

(a) By hand, fax, registered mail or email containing an authorized electronic signature; and

(b) To the Secretary-General at the headquarters of the Authority or to the designated representative at the address stated on the Seabed Mining Register, as the case may be.

4. The requirement to provide any information in writing under these regulations is satisfied by the provision of the information in an electronic document containing a digital signature.

5. Delivery by hand is deemed to be effective when made. Delivery by fax is deemed to be effective when the “transmit confirmation report” confirming the transmission to the recipient’s published fax number is received by the transmitter. Delivery by registered airmail is deemed to be effective 21 Days after posting. Delivery by email is deemed to be effective when the email enters an information system designated or used by the addressee for the purpose of receiving documents of the type sent and is capable of being retrieved and processed by the addressee.

6. Notice to the designated representative of the applicant or Contractor constitutes effective notice to the applicant or Contractor for all purposes under these regulations, and the designated representative is the agent of the applicant or Contractor for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

7. Notice to the Secretary-General constitutes effective notice to the Authority for all purposes under these regulations, and the Secretary-General is the Authority’s agent for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

Regulation 94

Adoption of Standards

1. The Commission shall, taking into account the views of [recognized experts,] **[recognized experts identified in accordance with annex X]** relevant Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to:

(a) Operational safety;

(b) The conservation **and Exploitation** of the Resources; and

(c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, as referred to in regulation 45.

1bis. The Council shall ensure that requirements and legally-binding obligations associated with relevant and/or applicable international treaties and agreements are adopted/integrated into the ISA's Standards and Guidelines.

2. The Council shall consider and approve, upon the recommendation of the Commission **and taking into account statements submitted by Stakeholders during a public consultation**, the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority **[and] [including] the decisions of the Council and the Assembly and developed on the basis of Best Available Scientific Evidence**. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council.

3. The Standards contemplated in paragraph 1 above may include both qualitative and quantitative standards, as well as the methods, **[process or] [processes and]** technology required to implement the Standards.

3bis. Standards shall be methodological, procedural, technical and environmental rules that are necessary to implement the regulations and to ensure a coherent approach to monitoring and assessment, as referred to in Regulation 45. Standards are legally binding on Contractors and the Authority, and shall be revised every 5 years in the light of new knowledge, e.g. resulting from environmental impact assessments and monitoring.

4. Standards adopted by the Council **[and the Assembly] [and approved by the Assembly]** shall be legally binding on Contractors and the Authority and **[may] [shall] [should]** be **[revised] [reviewed]** at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology.

4alt. Standards adopted by the Council shall be legally binding on Contractors and the Authority and the Commission shall review these Standards at least every five years from the date of their adoption or revision and advise the Council, in the light of improved knowledge or technology, as to whether any revision is required.

Regulation 94 Alt

Adoption of Standards

1. Standards and amendments thereto are binding on all persons operating in the Area.

2. Standards are prepared by the Commission, which shall take into account the views of recognized experts, relevant Stakeholders, and relevant existing international standards, and make recommendations to the Council on the adoption and revision of Standards. The Council shall consider and approve the Standards upon the recommendation of the Commission. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council. The Standards may be revised at least every five years from the date of their adoption or revision, and in the light of improved knowledge or technology. The Standards approved by the Council shall remain effective on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly.

3. Standards may be adopted in relation to:

(a) health, safety and labor matters;

(b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the Marine Environment;

(c) the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline, and of interference with the ecological balance of the Marine Environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of Installations, pipelines and other devices related to such activities; and

(d) other matters.

4. Standards may include both qualitative and quantitative norms, as well as the methods, processes and technologies necessary to comply with the standards.

Regulation 95

Issue of Guidelines

1. The Commission or **where there is no conflict of interest** the Secretary-General **[shall] [may]**, from time to time, **[issue] [prepare]** Guidelines of a technical or administrative nature, taking into account the views of **the Council and** relevant Stakeholders. Guidelines will support the implementation of these regulations from an administrative and technical perspective.

1alt. The Commission shall, from time to time, develop Guidelines of a technical nature, for the guidance of Contractors in order to assist in the implementation of these Regulations, taking into account the views of relevant Stakeholders.

1alt bis. The Secretary-General shall, from time to time, develop Guidelines of an administrative nature, taking into account the views of the Commission as well as other relevant Stakeholders.

1alt ter. Guidelines will support the implementation of the Regulations from an administrative and technical perspective. Guidelines will also clarify documentation requirements for an application, detail process requirements (e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions.

2. The full text of such Guidelines shall be **[reported] [recommended]** to the Council **for adoption. In case of Guidelines which are not of a predominantly administrative nature, the Council shall take into account statements submitted by Stakeholders during public consultation.** Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may request that the guideline be modified **[or withdrawn]. Where no such request is made the Council shall approve the Guidelines.**

2bis. Where the Council approves the Guidelines, the Commission or the Secretary-General, as appropriate, shall issue the Guidelines.

3. The Commission or the Secretary-General shall keep under review such Guidelines **which shall be reconsidered, and revised as needed, at least every**

five years from the date of their adoption or revision, and in the light of improved knowledge or information.

3alt. The Commission and the Secretary-General shall review the Guidelines in the light of improved knowledge or information and submit their recommendations to the Council for further consideration and, possibly, adoption.

4. Guidelines are only of a recommendatory nature and do not affect the Contractor's performance of the Exploitation contract by means other than the Guidelines.

Regulation 95 Alt

Issue of Guidelines

1. Guidelines and amendments thereto issued by the Commission or by the Secretary-General shall be Advisory in nature and shall be intended to support the implementation of these Regulations.

2. Guidelines are prepared by the Commission, which shall take into account the views of recognized experts and relevant Stakeholders.

3. Guidelines are prepared in relation to matters of a technical or administrative nature.

4. The full text of such Guidelines shall be reported to the Council. Should the Council find that a Guideline is inconsistent with the intent and purposes of the Authority, it may request that the guideline be modified or withdrawn.

5. The Commission or the Secretary-General shall keep under review such Guidelines in the light of improved knowledge or information from Stakeholders.

Part XI

Inspection, compliance and enforcement

Section 1

Inspections

Regulation 96

Inspections: general

1. The Council shall establish appropriate mechanisms for [inspection] [directing and supervising a staff of Inspectors], as provided for in article 162 (2) (z) of the Convention.
2. The Contractor shall permit the Authority to send its Inspectors, who may be accompanied by a representative of [its] [the Contractor's sponsoring] State or other party concerned, [in particular affected coastal States], in accordance with [article 142 and article 165 (3) of the Convention.] [aboard vessels and Installations, whether offshore or onshore,] used by the Contractor to carry out Exploitation activities under an exploitation contract [, as well as to enter its offices wherever situated]. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.
3. The Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, the names of the Inspectors and any activities that the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations [where the Secretary-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General may, where [practicable] [deemed necessary], exercise the right to conduct an inspection without prior notification] [where the Secretary-General may without prior notification direct an inspection of the Contractor's activities in accordance with regulation 4(5)].
4. Inspectors may inspect any relevant documents or items which are necessary to monitor the Contractor's compliance, all other recorded data and samples and [any vessel or Installation] [vessels and Installations used in the Area in connection with activities in the Area], including its log, personnel, equipment, records and facilities.
5. The Contractor and its agents and employees shall facilitate the actions of the Inspectors in the performance of their duties, and shall:
 - (a) Accept and facilitate the prompt and safe boarding and disembarkation of vessels and Installations by Inspectors;
 - (b) Cooperate with and assist in the inspection of any vessel or Installation conducted pursuant to this regulation;
 - (c) Provide access to all relevant areas, items and personnel in offices or on vessels and Installations at all reasonable times;
 - (d) Provide access to monitoring equipment, books, documents, papers, records and passwords which are necessary and directly pertinent to verify the expenditures referred to in the Plan of Work or necessary to determine compliance

with the financial payments due under the exploitation contract and these regulations;

(e) Answer fully and truthfully any questions put to them;

(f) Accept the deployment of remote real-time monitoring and surveillance equipment, where required by the [Secretary-General] [Council], and facilitate the activities of Inspectors in deploying such equipment and having access thereto; and

(g) Not obstruct, intimidate or interfere with Inspectors in the performance of their duties.

6. Inspectors shall:

(a) Follow all reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor, the captain of the vessel or other relevant safety officers aboard vessels and Installations; and

(b) To the maximum extent possible, refrain from any undue interference with the safe and normal operations of the Contractor and of vessels and Installations, unless the Inspector has reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.

Regulation 97

Inspectors: general

1. The Council, based on the recommendations of the Commission, shall determine the relevant qualifications and experience appropriate to the areas of duty of an Inspector under this Part save in situations where the Secretary-General shall direct an inspection of the Contractor's activities in accordance with regulation 4(5). Based on the specified qualifications and experiences, a roster of candidates for Inspectors, including the members of the Commission as provided in article 165 (3) of the Convention, shall be made by the Secretariat.

2. The Commission shall make recommendations to the Council on the appointment, supervision and direction of Inspectors, and on an inspection programme and schedule, under the inspection mechanism established by the Council in regulation 96 (1).

3. The Secretary-General shall manage and administer such inspection programme, including the terms and conditions of the appointment of Inspectors, at the direction of the Council.

Regulation 98

Inspectors' powers

1. An Inspector may, for the purposes of monitoring or enforcing compliance with the Rules of the Authority and the terms of the exploitation contract:

(a) Question any person engaged by the Contractor in the conduct of Exploitation activities on any matter to which the Rules of the Authority relate;

(b) Require any person who has control over, or custody of, any relevant document, whether in electronic form or in hard copy, including a plan, book or record, to produce that document to the Inspector immediately or at any other time and place that the Inspector requires;

(c) Require from any person referred to in subparagraph (b) above an explanation of any entry or non-entry in any document over which that person has custody or control;

(d) Examine any document produced under subparagraph (b) and make a copy of it or take an extract from it;

(e) Inspect or test any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector's opinion, is being or is intended to be used for the purposes of the Exploitation activities [], unless such inspection or testing will unreasonably interfere with the Contractor's [operations] [activities in the Area], create a safety hazard and or endanger the environment;

(f) Seize any document, article, substance or any part or sample of such for examination or analysis that the Inspector may reasonably require;

(g) Remove any representative samples or copies of assays of such samples from any vessel or equipment used for or in connection with the Exploitation activities;

(h) Require the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities as may be deemed necessary by the Inspector, [unless such procedures will unreasonably interfere with the Contractor's [operations] [activities in the Area]]; and

(i) Upon written authorization from the Council, perform any other prescribed function of the Authority as its representative.

2. An Inspector may instruct any Contractor, its employees or any other person who performs an activity in connection with an exploitation contract to appear before the Inspector to be questioned on any matter to which the Rules of the Authority relate.

3. Before an Inspector may seize any document under paragraph 1 (f) above, the Contractor may copy it.

4. When an Inspector seizes or removes any item under this regulation, the Inspector shall issue a receipt for that item to the Contractor.

5. An Inspector may document any site visit or inspection activity using any reasonable means including video, audio, photograph or other form of recording.

6. An Inspector shall be bound by strict confidentiality provisions and must have no conflicts of interest in respect of duties undertaken, and shall conduct his or her duties in accordance with the Authority's code of conduct for Inspectors and inspections approved by the Council.

Regulation 99

Inspectors' power to issue instructions

1. If, as a result of an inspection, an Inspector has evidence that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat [of Serious Harm] to the Marine Environment, or is otherwise in breach of the terms of its exploitation contract, the Inspector may give any instruction he or she considers reasonably necessary to remedy the situation, including:

(a) A written instruction requiring a suspension in mining activities for a specified period, or until such time and date as the Authority and Contractor agree;

(b) A written instruction placing conditions on the continuation of mining activities to undertake a specified activity in a specified way, and within a specified period or at specified times or in specified circumstances;

(c) A written instruction that the Contractor must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition; and

(c)bis A written instruction prohibiting the Contractor from continuing or undertaking certain activities; and

(d) A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring.

2. An instruction under paragraph 1 above must be given to the person designated by the Contractor or, in his or her absence, the most senior employee available aboard the vessel or Installation to whom the instruction can be issued.

3. Any instruction issued under paragraph 1 above shall be in force for a specified period, not exceeding seven Days, after which it lapses. The Inspector shall report immediately to the Secretary-General and to the Contractor's sponsoring State or States that an instruction has been issued under paragraph 1, and the Secretary-General may thereafter exercise the powers conferred upon the Secretary-General under regulation 103.

Regulation 100 Inspectors to report

1. At the end of an inspection, the Inspector shall prepare a report, setting out, inter alia, his or her general findings and any recommendations for improvements in procedures or practices by the Contractor. The Inspector shall send the report to the Secretary-General, and the Secretary-General shall send a copy of the report to the Contractor and to the sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State.

2. The Secretary-General shall report annually to the Council on the findings and recommendations following the inspections conducted in the prior Calendar Year, and shall make any recommendations to the Council on any regulatory action to be taken by the Council under these regulations and an exploitation contract.

3. The Secretary-General shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector by any person or the failure by a Contractor to comply with regulation 96 to the sponsoring State or States **[and] the flag State of any vessel or Installation concerned and the State of nationality of any person, if known** for consideration of the institution of proceedings under national law.

Regulation 101 Complaints

1. A person aggrieved by an action of an Inspector under this Part may complain in writing to the Secretary-General, who shall consider the complaint as soon as practicable.

2. The Secretary-General may take such reasonable action as is necessary in response to the complaint **and inform the Council accordingly.**

Section 2 Remote monitoring

Regulation 102 Electronic monitoring system

1. A Contractor shall restrict its mining operations to the Mining Area.
2. All mining vessels, **Installations involved in Exploitation activities** and mining collectors shall be fitted with an electronic monitoring system. Such system shall record, inter alia, the date, time and position of all mining activities. The detail and frequency of reporting shall be in accordance with the Guidelines.
3. The Secretary-General shall issue a compliance notice under regulation 103, where [he or she determines from] **[there is reasonable evidence to suggest based on]** the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.
4. All data transmitted to the Authority under this regulation shall be transmitted to the sponsoring State or States **and adjacent coastal States**.

Section 3

Enforcement and penalties

Regulation 103

Compliance notice, suspension and termination of exploitation contract

1. At any time, [if it appears to the Secretary-General] **[based]** on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, **or if requested by the Council to do so**, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice. **The Secretary-General shall inform the Council of any violations by a Contractor**.
 2. A compliance notice shall:
 - (a) Describe the alleged breach and the factual basis for it; and
 - (b) Require the Contractor to take remedial action or other such steps as the Secretary-General considers appropriate to ensure compliance within a specified time period.
- 2bis. A copy of the compliance notice shall be sent to the Sponsoring State.**
3. For the purposes of article 18 of annex III to the Convention, a compliance notice issued under this regulation constitutes a warning by the Authority.
 4. The Contractor shall be given a reasonable opportunity, **not exceeding 30 Days**, to make representations in writing to the Secretary-General concerning any aspect of the compliance notice. Having considered the representations, the Secretary-General may confirm, modify or withdraw the compliance notice.
 5. If a Contractor, in spite of [warnings] **a warning raised** by the Authority, fails to implement the measures set out in a compliance notice and continues its activities in such a way as to result in serious, persistent [and] **[or]** wilful violations of the fundamental terms of the contract, Part XI of the Convention, **the Agreement** and the rules, regulations and procedures of the Authority, the Council may suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract.

5bis. The Secretary-General shall provide an annual report to the Council in respect of any compliance notices issued.

6. In the case of any violation of an exploitation contract, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation.

7. Save for emergency orders under article 162 (2) (w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

8. The Secretary-General shall notify the Council as soon as reasonably practicable of any matter requiring the Council to issue an emergency order under article 162(2)(w) of the Convention.

Regulation 104

Power to take remedial action

1. Where a Contractor fails to take action required under regulation 103, the [Authority] [Secretary-General] may carry out any remedial works or take such measures as it considers reasonably necessary to prevent or mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an exploitation contract.

2. If the [Authority] [Secretary-General] takes remedial action or measures under paragraph 1 above, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor.

Regulation 105

Sponsoring States

Without prejudice to regulations 6 and 21, and to the generality of their obligations under articles 139 (2) and 153 (4) of the Convention and article 4 (4) of annex III to the Convention, States sponsoring Contractors [shall] **have the responsibility to ensure**, in particular, [take all necessary and appropriate measures to secure effective compliance] **that activities in the Area carried out** by Contractors whom they have sponsored [in accordance] **are conducted in conformity** with Part XI of the Convention, the Agreement, the rules, regulations and procedures of the Authority and the terms and conditions of the exploitation contract.

Part XII

Settlement of disputes

Regulation 106

Settlement of disputes

1. Disputes concerning the interpretation or application of these regulations and an exploitation contract shall be settled in accordance with section 5 of Part XI of the Convention and the rules of procedure adopted by the International Tribunal for the Law of the Sea for the conduct of expedited hearings concerning the Rules of the Authority.

2. [In accordance with article 21 (2) of annex III to the Convention,] any final decision rendered by a court or tribunal having jurisdiction under the [Convention] [Rules of the Authority] relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of any State party to the Convention affected thereby.

Part XIII

Review of these regulations

Regulation 107

Review of these regulations

1. Five years following the approval of these regulations by the Assembly, or at any time thereafter, the Council shall undertake a **full** review of the manner in which the regulations have operated in practice.
2. If, in the light of improved knowledge, **implementation experience, identification of regulatory gaps,** or technology, it becomes apparent that these regulations are not adequate, any State party, the Commission or any Contractor through its sponsoring State may at any time request the Council to consider, at its next ordinary session, revisions to these regulations **and the matter shall be included in the provisional agenda of the Council for that session.**
3. The Council shall establish a process that gives relevant Stakeholders adequate time and opportunity to comment on proposed revisions to these regulations, save for the making of an amendment to these regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.
4. In the light of that review, the Council may adopt and apply provisionally, pending approval by the Assembly, amendments to the provisions of these regulations, taking into account the recommendations of the Commission or other subordinate organs.
5. **Any amendments to these Regulations adopted by the Council and the Assembly, shall not be applied retroactively to the detriment of the Contractors that have already signed an exploitation contract with the Authority.**

Annex I

Application for approval of a Plan of Work to obtain an exploitation contract

Section I Information concerning the applicant

1. Name of applicant.
2. Street address of applicant.
3. Postal address (if different from above).
4. Telephone number.
5. Fax number.
6. Email address.
7. Name of applicant's designated representative.
8. Street address of applicant's designated representative (if different from above).
9. Postal address (if different from above).
10. Telephone number.
11. Fax number.
12. Email address.
13. If the applicant is a juridical person:
 - (a) Identify applicant's place of registration;
 - (b) Identify applicant's principal place of business/domicile; and
 - (c) Attach a copy of applicant's certificate of registration.
14. Identify the sponsoring State or States.
15. In respect of each sponsoring State, provide the date of deposit of its instrument of ratification of, or accession or succession to, the United Nations Convention on the Law of the Sea of 10 December 1982 and the date of its consent to be bound by the Agreement relating to the Implementation of Part XI of the Convention.
16. Attach a certificate of sponsorship issued by the sponsoring State or States.

Section II Information relating to the area under application

17. Define the boundaries of the area under application by attaching a list of geographical coordinates (in accordance with the [World Geodetic System 84] [most recent applicable international standards used by the Authority] and a georeferenced file and a map with the limits of the requested area.

Section III Technical information

18. Provide detailed documentary proof of the applicant's technical capability, or access thereto, to conduct the Exploitation and to Mitigate Environmental Effects.
19. Provide documentary proof that the applicant has the ability to comply with relevant safety, labour and health standards.
20. Provide a description of how the applicant's technical capability will be provided through the use of in-house expertise, subcontractors and consultants on the proposed Exploitation activities.

20bis. Identify the in-service and planned submarine cables and pipelines in, or adjacent to, the area under application; and provide documentary proof of the measures agreed between the applicant and the operators of the cables and pipelines to reduce the risk of damage to the in-service and planned submarine cables and pipelines.

Section IV

Financial information

21. Attach such information, in accordance with the **Standards and Guidelines, as applicable**, to enable the Council to determine whether the applicant has [or will have] access to the financial resources to carry out the proposed Plan of Work and fulfil its financial obligations to the Authority, as follows:

(a) If the application is made by the Enterprise, attach certification by its [competent authority] **[Director-General]** that the Enterprise has the necessary financial resources to meet the estimated costs of the proposed Plan of Work;

(b) If the application is made by a State or a State enterprise, attach a statement by the State or the sponsoring State certifying that the applicant has the necessary financial resources to meet the estimated costs of the proposed Plan of Work; and

(c) If the application is made by an entity, attach copies of the applicant's audited financial statements, including balance sheets and income statements and cash flow statements for the most recent three years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, noting that:

(i) If the applicant is a newly organized entity and a certified balance sheet is not available, attach a pro forma balance sheet certified by an appropriate official of the applicant;

(ii) If the applicant is a subsidiary of another entity, attach copies of such financial statements of that entity and a statement from that entity, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, that the applicant will have the financial resources to carry out the Plan of Work; and

(iii) If the applicant is controlled by a State or a State enterprise, attach a statement from the State or State enterprise certifying that the applicant will have the financial resources to carry out the Plan of Work.

22. If, subject to regulation 22, an applicant seeking approval of a Plan of Work intends to finance the proposed Plan of Work by borrowing, attach details of the amount of such borrowing, the repayment period and the interest rate, together with the terms and conditions of any security, charge, mortgage or pledge made or provided or intended to be made or provided or imposed by any financial institution in respect of such borrowing.

23. Provide details of [any] [the] Environmental Performance Guarantee proposed or to be provided by the applicant in accordance with regulation 26.

Section V Undertakings

24. Attach a written undertaking that the applicant will:

(a) Accept as enforceable and comply with the applicable obligations created by the provisions of the Convention and the rules, regulations and procedures of the Authority, the decisions of the relevant organs of the Authority and the terms of its contracts with the Authority;

(b) Accept control by the Authority of activities in the Area as authorized by the Convention; and

(c) Provide the Authority with a written assurance that its obligations under the exploitation contract will be fulfilled in good faith.

Section VI Previous contracts with the Authority

25. Where the applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium has previously been awarded any contract with the Authority, attach:

(a) The date of the previous contract or contracts;

(b) The dates, reference numbers and titles of each report submitted to the Authority in connection with the contract or contracts; [and]

(c) The date of termination of the contract or contracts, if applicable[.] [; and]

(d) The final report on the results of exploration and baseline investigations, including results of testing equipment and operations in the exploration area.

Section VII Attachments

26. List all the attachments and annexes to this application (all data and information should be submitted in hard copy and in a digital format specified by the Authority).

Annex II

Mining Workplan

A Mining Workplan, based on the results of Exploration (at least equivalent to the data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration contracts), should cover the following subject matters:

(a) A comprehensive statement of the Mineral Resource delineated in the relevant Mining Area(s), including details, or estimates thereof, of all known Mineral reserves reported in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves (see [ISBA/21/LTC/15](#), annex V), together with a comprehensive report of a suitably qualified and experienced person that includes details of and validation of the grade and quality of the possible, proven and probable ore reserves, as supported by a pre-feasibility study or a Feasibility Study, as the case may be;

(b) A chart of the boundaries of the proposed Mining Area(s) (on a scale and projection specified by the Authority) and a list of geographical coordinates (in accordance with the [\[World Geodetic System 84\]](#) **[most recent applicable international standards used by the Authority]**);

(c) A proposed programme of mining operations and sequential mining plans, including applicable time frames, schedules of the various implementation phases of the Exploitation activities and expected recovery rates;

(d) Details of the equipment, methods and technology expected to be used in carrying out the proposed Plan of Work, including the results of tests conducted and the details of any tests to be conducted in the future, as well as any other relevant information about the characteristics of such technology, including processing and environmental safeguard and monitoring systems, together with details of any certification from a conformity assessment body;

(e) A technically and economically justified estimate of the period required for the Exploitation of the Resource category to which the application relates;

(f) A detailed production plan, showing, in respect of each Mining Area, an anticipated production schedule that includes the estimated maximum amounts of Minerals that would be produced each year under the Plan of Work;

(g) An economic evaluation and financial analysis of the project;

(h) The estimated date of commencement of Commercial Production; and

(i) Details of subcontractors to be used for Exploitation activities.

Annex III

Financing Plan

A Financing Plan should include:

- (a) Details and costing of the mining technique, technology and production rates applicable to the proposed mining activities;
- (b) Details and costing of the technological process applicable to the extraction and on-board processing of the Mineral ore;
- (c) Details and costing of the technical skills and expertise and associated labour requirements necessary to conduct the proposed mining activities;
- (d) Details and costing of regulatory requirements relevant to the proposed mining activities, including the cost of the preparation and implementation of the Environmental Management and Monitoring Plan and Closure Plan;
- (e) Details regarding other relevant costing, including capital expenditure requirements;
- (f) Details of expected revenue applicable to the proposed mining activities;
- (g) A detailed cash-flow forecast and valuation, excluding financing of the proposed mining activities, clearly indicating applicable regulatory costs; and
- (h) Details of the applicant's resources or proposed mechanisms to finance the proposed mining activities, and details regarding the impact of such financing mechanisms on the cash-flow forecast.

Annex IV

Environmental Impact Statement

1. Preparation of an Environmental Impact Statement

The Environmental Impact Statement prepared under these regulations and the present annex shall:

(a) Be prepared in plain language and in an official language of the Authority together with an official English-language version, where applicable;

(b) Provide information, **based on data from, as a general rule, 15 years of monitoring and** in accordance with the relevant regulations, Standards and Guidelines, corresponding to the scale and potential magnitude of the activities, to assess the likely Environmental Effects of the proposed activities. Such effects shall be discussed in proportion to their significance. Where an applicant considers an effect to be of no significance, there should be sufficient information to substantiate such conclusion, or a brief discussion as to why further research is not warranted; and

(c) Include a non-technical summary of the main conclusions and information provided to facilitate understanding of the nature of the activity by Stakeholders.

2. Template for Environmental Impact Statement

The recommended format for an Environmental Impact Statement is outlined below. It is intended to provide the International Seabed Authority, its member States and other stakeholders with unambiguous documentation of the potential Environmental Effects on which the Authority can base its assessment, and any subsequent approval that may be granted. Further detail for each section is provided following the overview.

[The document is a template only, and is not intended to be prescriptive but rather to guide the format and general content of an Environmental Impact Statement.] **[The document is a template and is intended to guide the format and structure by which the general content of an Environmental Impact Statement is addressed.]** It does not provide details of methodology or thresholds that may be resource- and site-specific. These methodologies and thresholds may be developed as Standards and Guidelines to support the regulations.

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Executive summary

One of the main objectives of the executive summary is to provide an overview of the project and a summary of the content of the Environmental Impact Statement for non-technical readers. Information provided in the executive summary should include:

- (a) A description of the proposed development and its objectives;
- (b) Economic, financial and other benefits to be derived from the project;
- (c) Anticipated impacts of the activity (physicochemical, biological, socioeconomic);
- (d) Mitigation measures to minimize environmental impacts;
- (e) Linkages with ISA global environmental policy and strategy, the applicable regional environmental management plan and the development of the Environmental Monitoring and Management Plan; and
- (f) Consultation undertaken with other parties.

1. Introduction

1.1 Background

Summarize briefly the project being proposed, including all main activities and locations.

1.2 Project viability

Provide information on the viability of the proposed development, its economic context and why the project is needed, and include a description of the benefits to mankind.

1.3 Project history

Summarize briefly the work undertaken up to the date the Environmental Impact Statement was finalized and ready to be submitted to the International Seabed Authority. This should include a brief description of the resource discovery, the exploration undertaken and any component testing conducted to date. For the component testing, provide a brief description of activities here. If applicable, include any report(s) related to component testing including any monitoring and assessment of the environmental impacts in an appendix.

1.4 Project proponent

Summarize the credentials of the proponent, including major shareholders, other contracts or licences held (including in other jurisdictions), previous and existing contracts with the Authority and the proponent's environmental record, etc. The proponent's technological and environmental expertise, capacity and financial resources should be outlined.

1.5 This report

1.5.1 Scope

Provide detail as to what is and is not included, based on earlier assessments or work. Link to other supporting information. A key item that should be included is a previous risk assessment that evaluates activities classified as low risk (and

therefore should receive less emphasis), compared with high-risk activities, which should be the focus of this Environmental Impact Statement.

1.5.2 Report structure

Where the Environmental Impact Statement spans multiple volumes, this section should provide additional details not listed in the table of contents.

2. Policy, legal and administrative context

Provide information on the relevant policies, legislation, agreements, standards and guidelines that are applicable to the proposed mining operation.

2.1 Applicable mining and environmental legislation, policy and agreements

Outline the national and international legislation, regulation or guidelines **as well as the Regional Environmental Management Plan** that apply to the management or regulation of Exploitation in the Area, including how the proposed operation will comply with them.

2.2 Other applicable legislation, policies and regulations

Outline any other legislation, policies or regulations that do not necessarily apply specifically to seabed mining or the environment, but may be relevant to the proposal (e.g., shipping regulations, maritime declarations, marine scientific research, climate change policies, Sustainable Development Goals). This section should also refer to national regulations and laws that relate to the effects of Exploitation activities on coastal States, or other places where components of Exploitation (e.g., processing) could occur.

2.3 Applicable international and regional agreements

List the international agreements applicable to the operation, such as the United Nations Convention on the Law of the Sea and the International Maritime Organization suite of environmental and safety conventions, which includes the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL) and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention), and applicable regional agreements.

2.4 Other applicable standards, principles and guidelines

Discuss applicable standards and guidelines that will be adhered to or aligned with throughout the operation, such as the Standards and Guidelines of the International Seabed Authority, the Equator Principles, the Environmental Management Standards of the International Organization for Standardization, the Code for Environmental Management of Marine Mining of the International Marine Minerals Society, the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation and the standards of the Extractive Industries Transparency Initiative.

3. Description of the proposed development

Provide details of the proposed development activity, including relevant diagrams and drawings. It is understood that most projects will likely involve the recovery of minerals from the Area, with the concentrating process(es) occurring on

land within a national jurisdiction (outside the jurisdiction of the Authority). While it is expected that this section would provide a brief description of the entire project, including offshore and land-based components, the Environmental Impact Statement should focus on those activities occurring within the Authority's jurisdiction (e.g., activities related to the recovery of the minerals from the Area up to the point of trans-shipment).

Details to be provided under this section should include the headings listed below.

3.1 Project area definition

3.1.1 Location

Include coordinates of the project area, detailed location maps (drawn to scale), a layout of the site and the locations of impact reference zones and preservation reference zones.

3.1.2 Associated activities

Describe the supporting activities and infrastructure required (e.g., transportation corridors) that are outside the direct mining site.

3.2 Mineral resource

Provide details of the type of resource proposed for extraction (e.g. sea floor massive sulphides, polymetallic nodules, ferromanganese crusts), the type of commodity and its grade and volume. Estimates of the inferred and indicated resource should be provided, along with visual models of the resource.

3.3 Project components

Provide background information on the proposal and the technologies and equipment to be employed, and include the subsections set out below.

3.3.1 Project scale

Provide an overview of the spatial and temporal scales of the mining operation, including volumes of material to be recovered, processed and deposited or discharged into the water column or back to the seabed. This should include an account of the area to be physically mined, as well as the likely extent of any secondary impacts (e.g., sediment plumes), which will be discussed in greater detail later.

3.3.2 Mining

Provide details of the technologies to be employed, including relevant diagrams and drawings, that address: the Mining Workplan, timelines and the general mining sequence, the technologies to be employed to recover the resource from the seabed, the depth of penetration into the seabed and other details of the mining activities.

3.3.3 Transport/materials handling

Provide a description of all methods to be used to transport the mineral-bearing ore, including from the sea floor to the surface, and any methods related to the trans-shipment of the mineral-bearing ore, including transfers at sea.

3.3.4 On-site processing

Provide a description of the processing of the mineralized material that will occur within or above the Area, including shipboard processing. Include a description of any methods to be used on the sea floor to separate the mineralized material from surrounding sediment and/or rock, as well as any dewatering of the mineralized material at the surface. This section should also cover any disposal of seawater/fines.

Include a description of the disposal and discharge of sediment, wastes or other effluents into the Marine Environment and the disposal of waste from general ship operations. The handling and management of hazardous materials should also be described, together with a description of the nature of such material and its transportation, storage and disposal.

3.3.5 Support equipment

Describe any equipment expected for mining and support operations (e.g., mining vessels/platforms, supply vessels, barges). Describe the anticipated frequency of vessel movements for these activities.

3.4 Commissioning

Describe the pre-production activities that will take place with regard to the establishment and set-up of the site for mining operations. The management of this process (such as the establishment of safety zones around vessels) should also be described.

3.5 Construction and operating standards

Outline the design codes to which the equipment will be or has been built, as well as the operating standards that will be applied to mining operations. This section should include subsections such as those set out below.

3.5.1 Design codes

3.5.2 Health and safety

3.5.3 Workforce description

This section should also outline capacity-building objectives and commitments.

3.6 Decommissioning and closure

Describe the steps that will occur when the mining operation is completed, including the decommissioning of offshore infrastructure, under a Closure Plan.

3.7 Other alternatives considered

Provide an account of alternative options that were considered and rejected in favour of the current proposal. Aspects should include the selection of the mine site, mine production scenarios, transport and materials handling and shipboard processing.

3.8 Development timetable (detailed schedule)

Provide a description of the overall timetable, from the implementation of the mining programme to the decommissioning and closure of operations. The description should include the major phases of the operation as well as the milestone dates on which relevant tasks are expected to be completed. Information on the development timetable provided under this section should clearly

communicate the different phases in the development proposal. For reasons of clarity, a flow chart or a Gantt or PERT (Programme Evaluation and Review Technique) chart should be used where appropriate. Information provided in this section should include the following:

- (a) The funding arrangement for the proposed activity, or whether the availability of funds is subject to this or other approvals being granted;
- (b) Pre-construction activities including the development and testing of mining equipment, operations and systems in situ (if applicable);
- (c) A construction schedule and staging timetable;
- (d) An infrastructure development schedule;
- (e) A monitoring schedule (during and after operations); and
- (f) A closure schedule.

4. Description of the existing physicochemical environment

Give a detailed account of knowledge of the environmental conditions at the mine site, which should include information from a thorough literature review as well as from on-site studies. The Standard on baseline investigations shall guide the drafting of this section by providing information on the minimum amount of detail required for an acceptable baseline description. The account will provide the baseline description of the geological and oceanographic conditions against which impacts will be measured and assessed. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

4.1 Key messages

Provide an overview of key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).

4.2 Regional overview

Describe the general environmental conditions of the site, including the geological and oceanographic setting within a broader regional context and refer to the applicable Regional Environmental Management Plan. This should be brief section that includes a map. A more detailed site-specific description will be provided in accordance with the sections below.

[4.3 Studies completed

Describe any prior research/Exploration (including methods used for completing the studies based on Best Available Techniques) that could provide relevant information for this Environmental Impact Statement and future activities. These should be detailed in the appendices, and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement.]

4.4 Meteorology and air quality

Provide a general overview of climatology (e.g., wind directions and speeds, seasonal patterns). This section may be most relevant to surface operations.

4.5 Geological setting

Describe the nature and extent of the mineral resource and bedrock within a broader geological context. Describe the [general geological landscape and topographic features] [geological petrographic and geomorphological setting] of the site, including high resolution bathymetric maps and sedimentation rates, and refer to special features such as hydrothermal vents, seeps and seamounts.

4.6 Physical oceanographic setting

Provide a description of oceanographic aspects such as currents, oceanographic fronts, eddies, particle flux [sedimentation rates] and waves. Seasonal variability is an important element. Detail is required on the regional setting, as well as the specific site, and should include changes in physical conditions and processes according to depth and horizontal distance from the proposed mine site (near-field, far-field).

4.7 Chemical oceanographic setting

Provide a description of water mass characteristics [at the site and] [above the site] at various depths of the water column, including the structure and development of the oxygen minimum zone in particular near the sea floor (up to 200m above bottom), that includes nutrients, particle loads, temperature and dissolved gas profiles, vent-fluid characteristics if applicable, turbidity [and geochemistry], etc.

4.8 Seabed substrate characteristics

Provide a description of substrate composition, including physical and chemical properties (e.g., sediment composition, pore-water profiles, grain size, sediment mechanics).

4.9 Natural hazards

Provide a description of applicable potential natural hazards for the site, including volcanism, seismic activity, cyclone/hurricane trends, tsunamis, etc.

4.10 Noise and light

Provide a description of ambient noise and light, and the influence of existing Exploration and maritime activity.

4.11 Greenhouse gas emissions and climate change

Provide a description of the level of gas and chemical emissions from both natural and anthropogenic activities in the Area, as well as those affecting sea floor and water-column chemistry.

4.12 Summary of the existing physicochemical environment

Summarize key findings and include notes on special considerations for hydrothermal vents, seeps, seamounts and oceanographic fronts or eddies. It is anticipated that this summary will be up to one page, and be more extensive than the key messages section.

5. Description of the existing biological environment

The description of the site should be divided by depth regime (surface, midwater and benthic, where appropriate), and provide a description of the various biological components and communities that are present in or utilize the area. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

5.1 Key messages

Provide an overview of the key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).

5.2 Regional overview

Provide general regional context, and include site-specific issues and characteristics, existing areas of particular environmental interest and national areas of adjacent countries, if any. References to relevant technical data and previous studies should also be included. This section should be brief, but provide broader context for the more detailed site-specific description below.

[5.3 Studies completed

Describe any prior research/Exploration (including methods used for completing the studies based on Best Available Techniques) that could provide relevant information for this Environmental Impact Statement and future activity. These should be detailed in the appendices, and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement.]

5.4 Biological environment

Address diversity, abundance, biomass, community-level analyses, connectivity, trophic relationships, resilience, ecosystem function and temporal variability. Any work on ecosystem models and appropriate ecosystem indicators, etc., should also be presented here. This section should span the size range from megafauna to microbial communities.

The description of the fauna is structured by depth range, as this enables a direct linkage to the source and location of an impact. For each depth zone, there should be a description of the main taxonomic/ecological groups (e.g., plankton, fish, marine mammals, benthic invertebrates, demersal scavengers), using the Authority's Guidelines.

The description here needs to detail the animal communities in the water column down to the Mining Area and beyond, their relationship to the natural habitat, including the mineral resource, and the functional ecological relationships across groups to assess the scale of impacts to be expected if mining occurs.

5.4.1 Surface

Describe the biological environment from the surface to a depth of 200 metres, including plankton (phytoplankton and zooplankton), surface/near-surface fish such as tuna, and seabirds and marine mammals. The description should also evaluate the temporal and spatial variability in distribution and composition.

5.4.2 Midwater

Describe the [biological environment] [pelagic fauna and their habitat] in the open water from a depth of 200 metres down to 50 metres above the sea floor, and include zooplankton, nekton, mesopelagic and bathypelagic fishes and deep-diving mammals. The description should also evaluate the temporal and spatial variability in distribution and composition.

5.4.3 Benthic

Describe the benthic invertebrate and fish communities, including infauna and demersal fish, up to an altitude of 50 metres above the sea floor. This should include considerations of species richness, biodiversity, faunal densities, community structures and connectivity, etc. Bioturbation should also be covered in this section.

5.4.4 Ecosystem/community-level description

Summarize existing community or ecosystem studies that integrate elements of the above sections. The summary should consider early life-history stages, recruitment and behavioural information.

5.5 Summary of the existing biological environment

Summarize the key findings with respect to the biological environment, including regional distributions, special faunal characteristics, etc. It is envisaged that this summary will be up to one page in length.

6. Description of the existing socioeconomic environment

This section should describe the socioeconomic aspects of the project.

6.1 Key messages

Provide an overview of key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).

6.2 Existing uses

[6.2.1 Fisheries

If the project area occurs within an area used by fisheries, then this needs to be described here. This should include description of areas of significance for fish stocks, such as spawning grounds, nursery areas or feeding sites.]

6.2.2 Marine traffic

This section describes the non-project-related marine traffic occurring within the project area.

[6.2.3 Tourism

Describe areas used by cruise liners and for game fishing, sightseeing, marine mammal watching and other relevant tourism activities.]

6.2.4 Marine scientific research

Outline the current scientific research programmes taking place in the area.

6.2.5 Area-based management tools

Describe any relevant area-based management established under subregional, regional or global processes and the scope, geographical coverage and objectives of such tools. Also describe any relevant area-based management in adjacent areas under national jurisdiction.

6.2.6 Other

List other uses of the project area that are not related to the above (e.g., submarine cables, other mineral exploration, exploitation projects).

6.3 Sites of an archaeological or historical nature

List any sites of archaeological or historical significance that are known to occur within the potential area of impact.

6.4 Summary of existing sociocultural environment

Summarize key findings regarding the sociocultural environment. It is envisaged that this section will be up to a page in length, and more extensive than the key messages.

6bis. Evaluation methodology

7. Assessment of impacts on the physicochemical environment and proposed Mitigation

Provide a detailed description and evaluation of potential impacts of the operation to components of the physical environment identified in section 4. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

(a) The source (action, temporal and spatial duration) and nature of the disturbance;

(a)**bis** The nature and extent of any actual or potential impact, including cumulative impacts **in the Mining Area of the operation over the duration of the mining contact, in the Contract Area and the wider region from all known pressures together;**

(a)ter The methods used to determine impacts (including the assumptions of any impact modelling undertaken);

(b) Measures that will be taken to avoid, remedy or mitigate such impacts; and

(c) The unavoidable (residual) impacts that will remain.

It is important that these sections make clear the expected longevity of unavoidable effects. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

7.1 Key messages

Provide an overview of the key content covered in section 7.

7.2 Description of potential impact categories

Provide an overview and description of the categories of general impacts caused by the mining operation. This should introduce the major types of effect, such as habitat removal, the creation of sediment plumes, noise and light, etc.

Key elements that need to be included are:

- (a) Descriptions of impact studies carried out during exploration (e.g., component testing **and the resulting observations**);
- (b) Descriptions of the results of any environmental risk assessments, which should be included as separate reports or appendices where appropriate; and
- (c) Descriptions of the methods applied to describe and quantify impact categories and assessment.

7.3 Meteorology and air quality

Provide a description of potential effects on air quality from the surface or subsurface operations.

7.3.1 Potential impacts and issues to be addressed

7.3.2 Environmental management measures to mitigate impacts

7.3.3 Residual impacts

7.4 Geological setting

Provide a description of impacts the mining operation may have on the **[topography]** **[geomorphology]** of the site or its **[geological/geophysical composition]** **[sedimentary and geological characteristics]**.

7.4.1 Potential impacts and issues to be addressed

7.4.2 Environmental management measures to mitigate impacts

7.4.3 Residual impacts

7.5 Physical oceanographic setting

Provide a description of the effects on the current speed/direction and **[sedimentation rates]**, etc. A regional oceanographic model will be relevant to this section.

7.5.1 Potential impacts and issues to be addressed

7.5.2 Environmental management measures to mitigate impacts

7.5.3 Residual impacts

7.6 Chemical oceanographic setting

Provide a description of the effects such as sediment plume generation (frequency, spatial extent, composition and concentration) and the clarity of water, particulate loading, water temperature, dissolved gas and nutrient levels etc., in all relevant levels of the water column. A regional oceanographic model will be relevant to this section. For a sea floor massive sulphide project, the modification of vent-fluid discharges, if present, should be addressed.

7.7 Seabed substrate characteristics

For example: changes in the sediment composition, grain size, density and pore-water profiles.

7.8 Natural hazards

Discuss any impacts of the operation on natural hazards and plans to deal with these hazards.

7.9 Noise and light

Noise and light above existing levels.

7.10 Greenhouse gas emissions and climate change

Assessment of gas and chemical emissions from both natural and anthropogenic activities, as well as those affecting sea floor and water-column chemistry. Subsections should include estimated greenhouse gas emissions and a greenhouse gas emissions assessment where appropriate.

7.11 Maritime safety and interactions with shipping

Include project safety and interactions with other vessels.

7.12 Waste management

Vessel waste management, with reference to compliance with relevant conventions, legislation and principles, and methods of cleaner production and energy balance.

7.13 Cumulative impacts

The nature and extent of any interactions between various impacts, where they may have cumulative effects, must be considered on both spatial and temporal scales over the lifetime of the mining operation.

7.13.1 Proposed operations impacts

Cumulative within the scope of the mining proposed herein.

7.13.2 Regional operation impacts

Cumulative between activities, where known in the region.

7.14 Other issues

Outline here other, more general issues, as applicable.

7.15 Summary of residual effects

A table may be a useful summary format to pull together the above elements in a simple visual mode.

8. Assessment of impacts on the biological environment and proposed Mitigation

Provide a detailed description and evaluation of potential impacts of the operation to the biological environment components identified in section 5. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

(a) The source (action, temporal and spatial duration) and nature of the disturbance;

(a)**bis** The nature and extent of any actual or potential impact, including cumulative impacts **(in the Mining Area of the operation over the duration of the mining contract, in the Contract Area and the wider region from all known pressures together)**;

(a)ter The methods used to determine impacts (including the assumptions of any impact modelling undertaken);

(b) Measures that will be taken to avoid, remedy or mitigate such impacts; and

(c) The unavoidable (residual) impacts that will remain.

(d) The applicable environmental goals and objectives, indicators and threshold values as identified in the applicable Regional Environmental Management Plan.

It is important that these sections make clear the expected longevity of unavoidable (residual) impacts and whether or not the biological environment is expected to recover, and in what time frame, following disturbance. The detail in this section is expected to be based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

8.1 Key messages

This section should provide an overview of the key content covered in section 8.

8.1bis Description of the key sources of environmental impacts

8.2 Description of potential impact categories

This section is an overview and description of the categories of general impacts caused by the mining operation. This is not expected to be detailed, but rather to introduce the major types of effects, such as habitat removal, the crushing of animals, the creation of sediment plumes, noise and light, etc. A description should be included of any lessons learned from activities during the exploratory phase of the programme (e.g., mining system component tests).

8.3 Surface

Description of potential effects on the biological environment from the surface down to a depth of 200 metres, including any impacts on plankton (phytoplankton and zooplankton), nekton, surface/near-surface fish such as tuna, and seabirds and marine mammals.

8.3.1 Potential impacts and issues to be addressed

8.3.2 Environmental management measures to mitigate impacts

8.3.3 Residual impacts

8.4 Midwater

Description of the potential effects on the biological environment from a depth of 200 metres down to 50 metres above the sea floor, including zooplankton, nekton, mesopelagic and bathypelagic fishes and deep-diving mammals.

8.4.1 Potential impacts and issues to be addressed

8.4.2 Environmental management measures to mitigate impacts

8.4.3 Residual impacts

8.5 Benthic

Description of the potential effect on benthic invertebrate and fish communities, including infauna and demersal fish, up to an altitude of 50 metres above the sea floor.

8.5.1 Potential impacts and issues to be addressed

8.5.2 Environmental management measures to mitigate impacts

8.5.3 Residual impacts

8.6 Ecosystem/community level

Describe estimated effects on the ecosystem or where linkages between the various components above are known.

8.6.1 Potential impacts and issues to be addressed

8.6.2 Environmental management measures to mitigate impacts

8.6.3 Residual impacts

8.7 Cumulative impacts

The nature and extent of any interactions between various impacts where they may have cumulative effects must be considered. This should include an evaluation of the spatial and temporal intensity of mining and its effects on other impacts.

8.7.1 Proposed operations impacts

Cumulative within the scope of the mining proposed herein.

8.7.2 Regional operation impacts

Cumulative between activities, where known in the region.

8.8 Summary of residual effects

A table may be a useful summary format.

9. Assessment of impacts on the socioeconomic environment and proposed Mitigation

As in the preceding sections, provide a detailed description and evaluation of potential impacts of the operation to the socioeconomic components identified in section 6. This may need to consider effects that could happen during the construction/development (pre-commissioning), operational (including maintenance) and decommissioning phases, as well as the potential for accidental events. The preferred approach for this template is to include for each component a description of:

(a) The nature and extent of any actual or potential impact, including cumulative impacts;

(a)bis The methods used to determine impacts (including the assumptions of any impact modelling undertaken):

(b) Measures that will be taken to avoid, remedy or mitigate such impacts; and

(c) The unavoidable (residual) impacts that will remain.

9.1 Key messages

This section should provide an overview of the key content covered in section 9.

9.2 Impact identification

9.2.1 Existing uses

9.2.1.1 Fisheries

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.1.1 Potential impacts and issues to be addressed

9.2.1.1.2 Environmental management measures to mitigate impacts

9.2.1.1.3 Residual impacts

9.2.1.2 Marine traffic

A description of potential impacts on non-project-related marine traffic occurring within the project area, along with proposed management measures and a description of residual impacts.

9.2.1.3 Tourism

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.4 Marine scientific research

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.5 Area-based management tools

A description of potential impacts and issues to be addressed, along with proposed management measures and a description of residual impacts.

9.2.1.6 Other

List other potential impacts that are not related to the above (e.g., submarine cables, other mineral Exploration or Exploitation projects).

9.3 Sites of an archaeological or historical nature

Describe, as applicable, potential impacts to sites of archaeological or historical significance that are known to occur within the potential area of impact, along with proposed management measures and a description of residual impacts.

9.4 Socioeconomic and sociocultural issues

This section will provide a description of economic benefits or impacts, including any applicable social initiatives.

9.5 Summary of existing sociocultural environment

A table may be a useful summary format. Potential cumulative effects should also be included.

10. Accidental events and natural hazards

Environmentally hazardous discharges resulting from accidental and extreme natural events are fundamentally different from normal operational discharges of wastes and wastewaters. This section should outline the possibility/probability of accidental events occurring, the impact they may have, the measures taken to prevent or respond to such an event and the residual impact should an event occur.

For each component include:

- (a) The nature and extent of any impact;
 - (b) Measures that will be taken to avoid, mitigate or minimize such impact;
- and
- (c) Residual impacts.

10.1 Extreme weather

For example: hurricanes/cyclones.

10.2 Natural hazards

For example: volcanic eruptions, seismic events.

10.3 Accidental events

For example: leakage or spillage of hazardous material, fires and explosions, and collisions, including potential loss of equipment.

11. Environmental management, monitoring and reporting

Provide sufficient information to enable the Authority to anticipate possible environmental management, monitoring and reporting requirements for an environmental approval. Information listed include a description of the proponent's environmental management system and should reflect the proponent's environmental policy and the translation of that policy to meet the requirements of this section and previous sections during different stages of the project life (i.e., from construction to decommissioning and closure).

The Environmental Management and Monitoring Plan is a separate report from the Environmental Impact Statement, but this could be a useful opportunity to highlight some of the key issues from the Statement that will be addressed in the full Environmental Management and Monitoring Plan. Information detailed in this section should include the headings set out below.

11.1 Organizational structure and responsibilities

This section should show how the Contractor's environmental team fits into its overall organizational structure. Responsibilities of key personnel should be outlined.

11.2 Environmental management system

[Although a] [A] full environmental management system [may not] **shall** exist at the time the Environmental Impact Statement is submitted. **The proponent has to demonstrate that it will be capable of managing all relevant environmental questions**, outline the standards that will be considered and/or aligned with when developing the system for the project.

11.3 Environmental Management and Monitoring Plan

An Environmental Management and Monitoring Plan will be submitted as a separate document for the Authority's approval prior to the commencement of mining operations. This section should provide an overview of what the Plan would entail. This section should include, at a minimum, the headings set out below.

11.3.1 Mitigation and management

Summarize the actions and commitments that have arisen from the impact minimization and mitigation strategies.

11.3.2 Monitoring plan

Summarize the monitoring plan approach and programme.

11.3.2.1 Approach

11.3.2.2 Programme

Provide an overview of the envisaged monitoring programme (further detail will be provided in the Environmental Management and Monitoring Plan).

11.3.3 Closure Plan

A Closure Plan will be submitted as a separate document for the Authority's approval. However, this section should provide an overview of what the Closure Plan will entail, including decommissioning, continued monitoring and rehabilitation measures, if applicable.

11.4 Reporting

11.4.1 Monitoring

Outline how the results of monitoring studies will be reported to the Authority.

11.4.2 Incident reporting

Outline how Incidents will be reported and managed.

12. Product stewardship

Provide a brief description of the intended use of the mineral-bearing ore once it leaves the Area. The description should also address the meeting of standards for environmental management. The intention is not to provide a full and highly detailed account, but, where information is known about environmental impacts, these impacts should be described briefly here.

13. Consultation

Describe the nature and extent of consultation(s) that have taken place with parties identified who have existing interests or future interests in the proposed project area and with other relevant stakeholders based on the applicable guidelines.

13.1 Consultation methods

Describe the mechanism(s) used to consult with different groups and how this aligns with any relevant consultation obligations.

13.2 Stakeholders

List any relevant stakeholders that have been consulted and explain the process by which stakeholders were identified and summarise any matters raised by stakeholders and how these will be addressed.

13.3 Public consultation and disclosure

Provide a description of the goals and consultation workshops/meetings that occurred prior to the preparation of the report. Include a description of key concerns and comments identified by stakeholders and whether or not the applicant intends to address these concerns, and, if not, describe the reasons for that decision.

13.4 Continuing consultation and disclosure

Outline any further consultation with stakeholders that has been deemed necessary and is being planned.

14. Glossary and abbreviations

Explain the relevant terms used in the Environmental Impact Statement (e.g., terms under different legislation, technical terms) and provide a list of acronyms and their definitions.

15. Study team

Outline the people involved in carrying out the environmental impact assessment studies and in writing the Environmental Impact Statement. If independent scientists or other experts were involved in any of the work, they should be listed. The names, occupational qualifications and their role in the generation of the Environmental Impact Statement of such people should also be included.

16. References

Provide details of reference materials used in sourcing information or data used in the Environmental Impact Statement.

17. Appendices

The appendices should include all the technical reports carried out for parts of the environmental impact assessment and the Environmental Impact Statement.

Annex IVbis

Regional Environmental Management Plans



Annex IVter

Test Mining

Annex V

Emergency Response and Contingency Plan

An Emergency Response and Contingency Plan must:

- (a) Be prepared in accordance with Good Industry Practice and the relevant regulations, Standards and Guidelines;
- (b) Provide an effective plan of action for the applicant's efficient response to Incidents and events, including processes by which the applicant will work in close cooperation with the Authority, coastal States, other competent international organizations and, where applicable, emergency response organizations; and
- (c) Include:
 - (i) The overall aims and objectives and arrangements for controlling the risk of Incidents;
 - (ii) Relevant codes, standards and protocols;
 - (iii) Organizational structure and personnel roles and responsibilities;
 - (iv) Details of individuals authorized to initiate response mechanism(s);
 - (v) Details of control mechanisms in place during the course of normal operations;
 - (vi) Details of the emergency response equipment;
 - (vii) Details of the safety management system;
 - (viii) Details of the environmental management system;
 - (ix) A description of the mining operations and equipment, including emergency response equipment;
 - (x) A description of all foreseeable Incidents, an assessment of their likelihood and consequences and associated control measures;
 - (xi) The number of persons that can be present on the mining vessel(s) at any time;
 - (xii) A description of the arrangements to protect persons on the mining vessel(s), and to ensure their safe escape, evacuation and rescue;
 - (xiii) Details of arrangements for the maintenance of control systems to monitor the Marine Environment in the event of an Incident;
 - (xiv) Details of the emergency response plan;
 - (xv) Details of the known natural Marine Environmental conditions that may influence the efficiency of response equipment or the effectiveness of a response effort;
 - (xvi) Information and measures relating to the prevention of Incidents which could result in Serious Harm to the Marine Environment;
 - (xvii) An assessment of pollution hazards and the measures to prevent or reduce such hazards;
 - (xviii) An assessment of Mining Discharges and measures to control such discharges;
 - (xix) Details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in such warning;

-
- (xx) Details of arrangements for coordinating any emergency response;
 - (xxi) Details of training programmes for personnel;
 - (xxii) A description of the monitoring of performance under the plan;
 - (xxiii) Details of audit and review processes;
 - (xxiv) Details of the presence of other hazards/harmful substances; and
 - (xxv) An assessment of the likelihood of oil spills, leaks, etc., due to the normal operation of the mining vessel.

Note: This plan is to be developed further under these regulations and in conjunction with other international organizations, flag States, coastal States and sponsoring States and other entities that have relevant jurisdictional competence with regard to specific components of the plan.

Annex VI

Health and Safety Plan and Maritime Security Plan

[To be populated following discussion with the International Maritime Organization secretariat, members of the Authority and Stakeholders]

Annex VII

Environmental Management and Monitoring Plan

1. The Environmental Management and Monitoring Plan prepared under these regulations and this annex VII shall be:

(a) Prepared in plain language and in an official language of the Authority, together with, where applicable, an official English-language version; and

(a)bis Prepared in accordance with the relevant Regulations and Standards, taking into account applicable Guidelines, on the basis of Best Environmental Practice, Best Available Scientific Evidence, and Best Available Information;

(b) Prepared in clear language and in an official language of the Authority; and

(b)bis Verified by the report of independent competent persons.

2. An Environmental Management and Monitoring Plan shall contain:

(a) A non-technical summary of the main conclusions and information provided to facilitate understanding by members of the Authority and Stakeholders;

(b) A description of the area likely to be affected by the proposed activities;

(c) The environmental objectives **based on baseline environmental data** and standards to be met;

(d) Details of the Environmental Management System and the applicant's environmental policy;

(e) An assessment of the potential Environmental Effects of the proposed activities on the Marine Environment, and any significant changes likely to result;

(f) An assessment of the significance of the potential Environmental Effects, and proposed mitigation measures and management control procedures and responses to minimize the harm from Environmental Effects consistent with the environmental impact assessment and the Environmental Impact Statement;

(g) A description of the planned monitoring programme and the overall approach, standards, protocols, methodologies, procedures and performance assessment of the Environmental Management and Monitoring Plan, including the necessary risk assessment and management techniques, including adaptive management techniques (process, procedure, response), if appropriate, needed to achieve the desired outcomes;

(h) Details of the proposed monitoring stations across the project area, including the frequency of monitoring and data collection, the spatial and temporal arrangements for such monitoring and the justification for such arrangements;

(i) The location and planned monitoring and management of preservation reference zones and impact reference zones, or other spatial management planning tools;

(i)bis The location and boundaries of planned or established long-term protected areas as determined in the applicable Regional Environment Management Plan;

(j) A description of relevant environmental performance Standards and indicators (trigger and threshold points), including decision rules based on the results of the monitoring of these indicators;

(k) A description of a system for ensuring that the plan shall adhere to Good Industry Practice, Best Available Techniques and Best Available Scientific Evidence, and a description of how such practices are reflected in the proposed Exploitation activities;

(l) Details of the quality control and management standards, including the frequency of the review of the performance of the Environmental Management and Monitoring Plan;

(m) A description of the technology to be deployed, in accordance with Good Industry Practice and Best Available Techniques;

(n) Details of the training programme for all persons engaged or to be engaged in activities in the project area;

(o) Details of Mining Discharges, including a waste assessment and prevention audit;

(p) Details of ongoing consultation with other users of the Marine Environment;

(q) Details of any practicable restoration of the project area;

(r) A plan for further research and studies; and

(s) Details of reporting requirements and timing.

Annex VIII

Closure Plan

1. The Closure Plan shall be prepared and implemented in accordance with the Guidelines and the relevant regional environmental management plan and shall include the following information:

(a) A description of the closure objectives and how these relate to the mining activity and its environmental and social setting;

(b) The period during which the plan will be required, which shall be determined by reference to a specified duration, achievement of a specified event or target indicator or compliance with specified terms agreed with the Authority;

(c) A plan with coordinates showing the area(s) subject to the closure objectives;

(d) A summary of the relevant regulatory requirements, including conditions previously documented;

(e) Details of the closure implementation and timetable, including descriptions of the arrangements for the temporary suspension of mining activities or for permanent closure decommissioning arrangements for vessels, Installations, plant and **removal of all** equipment (where applicable);

(f) Data and information relating to baseline conditions for monitoring measures;

(g) An updated environmental impact assessment for the activities that will be undertaken during closure, if any, together with details of the identifiable residual Environmental Effects, including any relevant technical documents or reports;

(h) Details of monitoring to be undertaken during and after closure that specify the sampling design (spatial and temporal sampling), the methods to be used and the duration of the post-closure activities;

(i) Details of the management measures to Mitigate the residual Environmental Effects;

(j) Details of **[any] [the] restoration and remediation** objectives and activities**],** where applicable;

(k) Information on reporting and management of data and information post-closure;

(l) Details of the persons or entity (subcontractor, consultant(s)) that will carry out the monitoring and management measures under the Closure Plan, including their qualification(s) and experience, together with details of the budget, project management plan and the protocols for reporting to the Authority under the Closure Plan;

(m) Details of the amount of the Environmental Performance Guarantee provided under these regulations;

(n) Details of any **[compensatory]** measures agreed or proposed to achieve the agreed closure objectives; and

(o) Details of consultations with Stakeholders in respect of the plan.

2. The level of detail in the Closure Plan is expected to differ between cases involving a temporary suspension of mining operations and cases involving final mine closure. The content of the Closure Plan is to be commensurate with the

nature, extent and duration of activities associated with the level of closure and maturity of the project.

Annex IX

Exploitation contract and schedules

THIS CONTRACT made the ... day of ... between the INTERNATIONAL SEABED AUTHORITY represented by its SECRETARY-GENERAL (hereinafter referred to as “the Authority”) and ... represented by ... (hereinafter referred to as “the Contractor”) WITNESSETH as follows:

A. Incorporation of clauses

The standard clauses set out in annex X to the regulations on exploitation of mineral resources in the Area shall be incorporated herein and shall have effect as if herein set out at length.

B. Contract Area

For the purposes of this Contract, the “Contract Area” means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.

C. Grant of rights

In consideration of (a) their mutual interest in the conduct of Exploitation in the Contract Area pursuant to the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement relating to the Implementation of Part XI of the Convention, (b) the rights and responsibility of the Authority to organize and control activities in the Area, particularly with a view to administering the resources of the Area, in accordance with the legal regime established in Part XI of the Convention and the Agreement and Part XII of the Convention, respectively, and (c) the interest and financial commitment of the Contractor in conducting activities in the Contract Area and the mutual covenants made herein, the Authority hereby grants to the Contractor the exclusive right to Explore for and Exploit [specified Resource category] in the Contract Area in accordance with the terms and conditions of this contract.

D. Entry into force and Contract term

This Contract shall enter into force on signature by both parties and, subject to the standard clauses, shall remain in force for an initial period of [x] years thereafter unless the Contract is sooner terminated, provided that this Contract may be renewed in accordance with the regulations.

E. Entire agreement

This Contract expresses the entire agreement between the parties, and no oral understanding or prior writing shall modify the terms hereof.

F. Languages

This Contract will be provided and executed in the [... and] English language[s] [and both texts are valid].

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the respective parties, have signed this Contract at ..., this ... day of

The Schedules

Schedule 1

Coordinates and illustrative chart of the Contract Area and proposed Mining Area(s).

Schedule 2

The Mining Workplan.

Schedule 3

The Financing Plan.

Schedule 4

The Emergency Response and Contingency Plan.

Schedule 5

The Health and Safety Plan and the Maritime Security Plan.

Schedule 6

The Environmental Management and Monitoring Plan.

Schedule 7

The Closure Plan.

Schedule 8

The Training Plan.

Schedule 9

Conditions, amendments and modifications agreed between the Commission and the Contractor, and approved by the Council, during the application approval process.

Schedule 10

Where applicable under regulation 26, the form of any Environmental Performance Guarantee, and its related terms and conditions.

Schedule 11

Details of insurance policies taken out or to be taken out under regulation 36.

Schedule 12

Agreed review dates for individual plans, together with any specific terms attaching to a review, where applicable.

Schedule 13

To the extent that any documentation is not available at the point of signing the Contract, and a time frame for submission has been agreed with the Commission, this should be reflected here, together with, where applicable, deadline dates.

Annex X

Standard clauses for exploitation contract

Section 1 Definitions

In the following clauses:

(a) “Regulations” means the regulations on exploitation of mineral resources in the Area, adopted by the Authority; and

(b) “Contract Area” means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.

Section 2 Interpretation

2.1 Terms and phrases defined in the regulations have the same meaning in these standard clauses.

2.2 In accordance with the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, its provisions and Part XI of the Convention are to be interpreted and applied together as a single instrument; this Contract and references in this Contract to the Convention are to be interpreted and applied accordingly.

Section 3 Undertakings

3.1 The Authority undertakes to fulfil in good faith its powers and functions under the Convention and the Agreement in accordance with article 157 of the Convention.

3.2 The Contractor shall implement this contract in good faith and shall in particular implement the Plan of Work in accordance with Good Industry Practice. For the avoidance of doubt, the Plan of Work includes:

- (a) The Mining Workplan;
- (b) The Financing Plan;
- (c) The Emergency Response and Contingency Plan;
- (d) The Training Plan;
- (e) The Environmental Management and Monitoring Plan;
- (f) The Closure Plan; and
- (g) The Health and Safety Plan and Maritime Security Plan,

that are appended as schedules to this Contract, as the same may be amended from time to time in accordance with the regulations.

3.3 The Contractor shall, in addition:

(a) Comply with the regulations, as well as other Rules of the Authority, as amended from time to time, and the decisions of the relevant organs of the Authority;

(b) Accept control by the Authority of activities in the Area for the purpose of securing compliance under this Contract as authorized by the Convention;

(c) Pay all fees and royalties required or amounts falling due to the Authority under the regulations, including all payments due to the Authority in accordance with Part VII of the regulations; and

(d) Carry out its obligations under this Contract with due diligence, including compliance with the rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment, and exercise reasonable regard for other activities in the Marine Environment.

Section 4

Security of tenure and exclusivity

4.1 The Contractor is hereby granted the exclusive right under this Contract to Explore for and Exploit the resource category specified in this Contract and to conduct Exploitation activities within the Contract Area in accordance with the terms of this Contract. The Contractor shall have security of tenure and this Contract shall not be suspended, terminated or revised except in accordance with the terms set out herein.

4.2 The Authority undertakes not to grant any rights to another person to Explore for or Exploit the same resource category in the Contract Area for the duration of this Contract.

4.3 The Authority reserves the right to enter into contracts with third parties with respect to Resources other than the resource category specified in this Contract but shall ensure that no other entity operates in the Contract Area for a different category of Resources in a manner that might interfere with the Exploitation activities of the Contractor.

4.4 If the Authority receives an application for an exploitation contract in an area that overlaps with the Contract Area, the Authority shall notify the Contractor of the existence of that application within 30 Days of receiving that application.

Section 5

Legal title to Minerals

5.1 The Contractor will obtain title to and property over the Minerals upon recovery of the Minerals from the seabed and ocean floor and subsoil thereof, in compliance with this Contract.

5.2 This Contract shall not create, nor be deemed to confer, any interest or right on the Contractor in or over any other part of the Area and its Resources other than those rights expressly granted in this Contract.

Section 6

Use of subcontractors and third parties

6.1 No Contractor may subcontract any part of its obligations under this Contract unless the subcontract contains appropriate terms and conditions to ensure that the performance of the subcontract will reflect and uphold the same standards and requirements of this Contract between the Contractor and the Authority.

6.2 The Contractor shall ensure the adequacy of its systems and procedures for the supervision and management of its subcontractors and any work that is further subcontracted, in accordance with Good Industry Practice.

6.3 Nothing in this section shall relieve the Contractor of any obligation or liability under this Contract, and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under this Contract in the event that it subcontracts any aspect of the performance of those obligations.

Section 7

Responsibility and liability

7.1 The Contractor shall be liable to the Authority for the actual amount of any damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions, and those of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, including the costs of reasonable measures to prevent and limit damage to the Marine Environment, account being taken of any contributory acts or omissions by the Authority or third parties. This clause survives the termination of the Contract and applies to all damage caused by the Contractor regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term.

7.2 The Contractor shall indemnify the Authority, its employees, subcontractors and agents against all claims and liabilities of any third party arising out of any wrongful acts or omissions of the Contractor and its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract.

7.3 The Authority shall be liable to the Contractor for the actual amount of any damage caused to the Contractor arising out of its wrongful acts in the exercise of its powers and functions, including violations under article 168 (2) of the Convention, account being taken of contributory acts or omissions by the Contractor, its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract, or third parties.

7.4 The Authority shall indemnify the Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, against all claims and liabilities of any third party arising out of any wrongful acts or omissions in the exercise of its powers and functions hereunder, including violations under article 168 (2) of the Convention.

Section 8

Force majeure

8.1 The Contractor shall not be liable for an unavoidable delay or failure to perform any of its obligations under this Contract due to force majeure, provided the Contractor has taken all reasonable steps to overcome the delay or obstacle to performance. For the purposes of this Contract, force majeure shall mean an event or condition that the Contractor could not reasonably be expected to prevent or control; provided that the event or condition was not caused by Contractor action, negligence or by a failure to observe Good Industry Practice.

8.2 The Contractor shall give written notice to the Authority of the occurrence of an event of force majeure as soon as reasonably possible after its occurrence (specifying the nature of the event or circumstance, what is required to remedy the event or circumstance and if a remedy is possible, the estimated time to cure or overcome the event or circumstance and the obligations that cannot be properly or timely performed on account of the event or circumstance) and similarly give written notice to the Authority of the restoration of normal conditions.

8.3 The Contractor shall, upon request to the Secretary-General, be granted a time extension equal to the period by which performance was delayed hereunder by force majeure and the term of this Contract shall be extended accordingly.

Section 9 Renewal

9.1 The Contractor may renew this Contract for periods not more than 10 years each, on the following conditions:

(a) The resource category is recoverable annually in commercial and profitable quantities from the Contract Area;

(b) The Contractor is in compliance with the terms of this Contract and the Rules of the Authority, including rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;

(c) This Contract has not been terminated earlier; and

(d) The Contractor has paid the applicable fee in the amount specified in appendix II to the regulations.

9.2 To renew this Contract, the Contractor shall notify the Secretary-General no later than one year before the expiration of the initial period or renewal period, as the case may be, of this Contract.

9.3 The Council shall review the notification, and if the Council determines that the Contractor is in compliance with the conditions set out above, this Contract shall be renewed on the terms and conditions of the standard exploitation contract that are in effect on the date that the Council approves the renewal application.

Section 10 Renunciation of rights

10.1 The Contractor, by prior written notice to the Authority, may renounce without penalty the whole or part of its rights in the Contract Area, provided that the Contractor shall remain liable for all obligations and liabilities accrued prior to the date of such renunciation in respect of the whole or part of the Contract Area renounced. Such obligations shall include, inter alia, the payment of any sums outstanding to the Authority, and obligations under the Environmental Management and Monitoring Plan and Closure Plan.

Section 11 Termination of sponsorship

11.1 If the nationality or control of the Contractor changes or the Contractor's sponsoring State or States, as defined in the regulations, terminates its sponsorship, the Contractor shall promptly notify the Authority, and in any event within 90 Days following such changes or termination.

11.2 In either such event, if the Contractor does not obtain another sponsor meeting the requirements prescribed in the regulations which submits to the Authority a certificate of sponsorship for the Contractor in the prescribed form within the time specified in the regulations, this Contract shall terminate forthwith.

Section 12 Suspension and termination of Contract and penalties

12.1 The Council may suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if any of the following events should occur:

(a) If, in spite of written warnings by the Authority, the Contractor has conducted its activities in such a way as to result in serious persistent and wilful

violations of the fundamental terms of this Contract, Part XI of the Convention, the Agreement and the rules, regulations and procedures of the Authority;

(b) If the Contractor has failed, within a reasonable period, to comply with a final binding decision of the dispute settlement body applicable to it;

(c) If the Contractor knowingly, recklessly or negligently provides the Authority with information that is false or misleading;

(d) If the Contractor or any person standing as surety or financial guarantor to the Contractor pursuant to regulation 26 of the regulations becomes insolvent or commits an act of bankruptcy or enters into any agreement for composition with its creditors or goes into liquidation or receivership, whether compulsory or voluntary, or petitions or applies to any tribunal for the appointment of a receiver or a trustee or receiver for itself or commences any proceedings relating to itself under any bankruptcy, insolvency or readjustment of debt law, whether now or hereafter in effect, other than for the purpose of reconstruction; or

(e) If the Contractor has not made bona fide efforts to achieve or sustain Commercial Production and is not recovering Minerals in commercial quantities at the end of five years from the expected date of Commercial Production, save where the Contractor is able to demonstrate to the Council's satisfaction good cause, which may include force majeure, or other circumstances beyond the reasonable control of the Contractor that prevented the Contractor from achieving Commercial Production.

12.2 The Council may, without prejudice to Section 8, after consultation with the Contractor, suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if the Contractor is prevented from performing its obligations under this Contract by reason of an event or condition of force majeure, as described in Section 8, which has persisted for a continuous period exceeding two years, despite the Contractor having taken all reasonable measures to overcome its inability to perform and comply with the terms and conditions of this Contract with minimum delay.

12.3 Any suspension or termination shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. The suspension or termination shall be effective 60 Days after such written notice, unless the Contractor within such period disputes the Authority's right to suspend or terminate this Contract in accordance with Part XI, Section 5, of the Convention, in which case this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

12.4 If the Contractor takes such action, this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

12.5 If the Council has suspended this Contract, the Council may by written notice require the Contractor to resume its operations and comply with the terms and conditions of this Contract, not later than 60 Days after such written notice.

12.6 In the case of any violation of this Contract not covered under Section 12.1 (a), or in lieu of suspension or termination under Section 12, the Council may impose upon the Contractor monetary penalties proportionate to the seriousness of the violation.

12.7 Subject to Section 13, the Contractor shall cease operations upon the termination of this Contract.

12.8 Termination of this Contract for any reason (including the passage of time), in whole or in part, shall be without prejudice to rights and obligations expressed in this Contract to survive termination, or to rights and obligations accrued thereunder prior to termination, including performance under a Closure Plan, and all provisions of this Contract reasonably necessary for the full enjoyment and enforcement of those rights and obligations shall survive termination for the period so necessary.

Section 13

Obligations on Suspension or following Expiration, Surrender or Termination of a Contract

13.1 In the event of termination, expiration or surrender of this Contract, the Contractor shall:

(a) Comply with the final Closure Plan, and continue to perform the required environmental management of the Contract Area as set forth in the final Closure Plan and for the period established in the final Closure Plan;

(b) Continue to comply with relevant provisions of the regulations, including:

(i) Maintaining and keeping in place all insurance required under the regulations;

(ii) Paying any fee, royalty, penalty or other money on any other account owing to the Authority on or before the date of suspension or termination; and

(iii) Complying with any obligation to meet any liability under Section 8;

(c) Remove all Installations, plant, equipment and materials in the Contract Area; and

(d) Make the area safe so as not to constitute a danger to persons, shipping or the Marine Environment.

13.2 Where the Contractor fails to undertake the obligations listed in Section 13.1 within a reasonable period, the Authority may take necessary steps to effect such removal and make safe the area at the expense of the Contractor. Such expense, if any, shall be deducted from the Environmental Performance Guarantee held by the Authority.

13.3 Upon termination of this Contract, any rights of the Contractor under the Plan of Work and in respect of the Contract Area also terminate.

Section 14

Transfer of rights and obligations

14.1 The rights and obligations of the Contractor under this Contract may be transferred in whole or in part only with the consent of the Authority and in accordance with the regulations, including payment of the fee as set out in appendix II to the regulations.

14.2 The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant in accordance with the regulations and assumes all of the obligations of the Contractor, and if the transfer does not confer to the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention.

14.3 The terms, undertakings and conditions of this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 15

No waiver

No waiver by either party of any rights pursuant to a breach of the terms and conditions of this Contract to be performed by the other party shall be construed as a waiver by the party of any succeeding breach of the same or any other term or condition to be performed by the other party.

Section 16

Modification of terms and conditions of this Contract

16.1 When circumstances have arisen or are likely to arise after this Contract has commenced which, in the opinion of the Authority or the Contractor would render this Contract inequitable or make it impracticable or impossible to achieve the objectives set out in this Contract or in Part XI of the Convention, the parties shall enter into negotiations to revise it accordingly.

16.2 This Contract may be revised by agreement between the Contractor and the Authority.

16.3 This Contract may be revised only:

- (a) With the consent of the Contractor and the Authority; and
- (b) By an appropriate instrument signed by the duly authorized representatives of the parties.

16.4 Subject to the confidentiality requirements of the regulations, the Authority shall publish information about any revision to the terms and conditions of this Contract.

Section 17

Applicable law

17.1 This Contract is governed by the terms of this Contract, the Rules of the Authority and other rules of international law not incompatible with the Convention.

17.2 The Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract shall observe the applicable law referred to in Section 17.1 hereof and shall not engage in any transaction, directly or indirectly, prohibited by the applicable law.

17.3 Nothing contained in this Contract shall be deemed an exemption from the necessity of applying for and obtaining any permit or authority that may be required for any activities under this Contract.

17.4 The division of this Contract into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

Section 18

Disputes

Any dispute between the parties concerning the interpretation or application of this Contract shall be settled in accordance with Part XII of the regulations.

Section 19
Notice

Any notice provided to or from one party to another pursuant to this Contract shall be provided in accordance with the notice provision set out at regulation 91 of the regulations.

Section 20
Schedules

This Contract includes the schedules to this Contract, which shall be an integral part hereof.

Appendix I

Notifiable events

In respect of an Installation or vessel engaged in activities in the Area, notifiable events for the purposes of regulation 36 include:

1. Fatality of a person.
2. Missing person.
3. Occupational lost time illness.
4. Occupational lost time injury.
5. Medical evacuation.
6. Fire/explosion resulting in an injury or major damage or impairment.
7. Collision resulting in an injury or major damage or impairment.
8. Significant leak of hazardous substance.
9. Unauthorized Mining Discharge.
10. Adverse environmental conditions with likely significant safety and/or environmental consequences.
11. Significant threat or breach of security.
12. Implementation of Emergency Response and Contingency Plan.
13. Major impairment/damage compromising the ongoing integrity or emergency preparedness of an Installation or vessel.
14. Impairment/damage to safety or environmentally critical equipment.
15. Significant contact with fishing gear.
16. Contact with submarine pipelines or cables.
17. **Significant contact with equipment related to marine scientific research.**

Appendix II

Schedule of annual, administrative and other applicable fees

Prescribed amount (United States dollars)

Annual fees

Submission of annual report (regulation 84)

Application and other fees

Application for the approval of a Plan of Work (regulation 7 (3) (j))

Renewal of an exploitation contract (regulation 20)

Transfer of an interest in an exploitation contract and approved Plan of Work (regulation 23)

Use of a contract or approved Plan of Work as security (regulation 22)

Temporary suspension in Commercial Production (regulation 29)

Modification to a Plan of Work (regulation 57)

Approval of a revised/final Closure Plan (regulations 59 (2) and 60)

Approval of a revised Environmental Management and Monitoring Plan (regulation 52 (8) (b))

[Other]

Appendix III

Monetary penalties

Prescribed

This appendix is no longer referenced in these draft regulations. Monetary penalties referenced in regulations 80 and 103 (6) to be imposed by the Council should be set out in a Council decision, which would be subject to review from time to time.

amount (United States dollars)

Penalty in respect of any underdeclaration or underpayment in respect of a royalty []

Penalty in respect of any failure to deliver or furnish a royalty return []

Penalty in respect of false royalty returns and information []

Failure to submit an annual report (regulation 38) []

Other: to be considered e.g. relating to notifiable events (failure to notify); environmental & other Incidents; not achieving/exceeding environmental thresholds. A desktop study should be performed in connection with monetary penalties under comparable national regimes for extractive industries, including those relating to a broader range of breaches of the environmental provisions and failure to adhere to the Plan of Work annexed to an exploitation contract.

Appendix IV

Determination of a royalty liability

This appendix sets out the methodology for the calculation of a royalty payable under regulation 64 in respect of the categories of resources. It is indicative and presented for discussion only at this time.

In the present appendix:

Applicable Royalty Rate means the royalty rate shown in the tables below for the applicable Resource category or as determined by a decision of the Council following any review under these regulations.

Average Listed Price means the Average Listed Price for a Relevant Metal, which is a price calculated by averaging the daily prices (in United States dollars)³ per metric ton listed for the metal in an Official Listing during a royalty return period as specified and published by the Authority.

Average Grade means the average metal content of the Relevant Metal obtained from a range of grades in the Mining Area⁴ expressed as the percentage of the metal per ton of the mineral-bearing ore at the Valuation Point and shown under column B in the tables below for the applicable Resource category.

First Period of Commercial Production means a fixed period of [x]⁵ years following the date of commencement of Commercial Production.

Official Listing means a list of quoted or published prices of metals:

- (a) On a recognized international mineral exchange or market;
- (b) In a publication recognized for quoting or publishing prices of metals in an international market; or
- (c) Where there is no listed price, the Council shall, based on recommendations of the Commission and following consultation with Contractors, determine a formula for the determination of the Average Listed Price for a Relevant Metal.

Relevant Metal means a metal contained in the mineral-bearing ore identified and determined by the Council as relevant for the purposes of calculating the assumed gross value.

Relevant Metal Value(s) means the assumed gross value(s) of a Relevant Metal calculated as the product of its Average Listed Price and Average Grade.

Second Period of Commercial Production means a fixed period of [y]⁶ years following the end of the First Period of Commercial Production.

Valuation Point is the point of first sale or the first point of transfer of the mineral-bearing ore by delivery onto a vessel transporting the ore from the Contract Area.

³ To consider the use of special drawing rights as a unit of account to value the revenue on which a royalty would be based.

⁴ An average grade (content) could be determined from resource assessments provided to the Authority in accordance with its resource classification guidelines. A range of acceptable grade parameters could be included in the regulations, with the actual average grade shown in a royalty return, subject where necessary to assay.

⁵ To be informed by financial model discussion.

⁶ See footnote 3.

Valuation of mineral-bearing ore⁷

1. The value of the mineral-bearing ore shall be an assumed gross value per metric ton at the Valuation Point.
2. The assumed gross value shall reflect the assumed gross value of each Relevant Metal contained in the mineral-bearing ore, calculated under this appendix.

Royalty rate

1. The Applicable Royalty Rate shall be:
 - (a) For the First Period of Commercial Production, the percentage(s) shown under column C in the tables below for the applicable Resource category; and
 - (b) For the Second Period of Commercial Production, the percentage(s) shown under column D in the tables below for the applicable Resource category.
2. The Applicable Royalty Rate and the manner and basis of its calculation may vary as between a royalty payable in respect of different Relevant Metals and different Resource categories.

Calculation of royalty payable

1. The royalty payable for a royalty return period is the product of the sum of the Relevant Metal Values multiplied by the Applicable Royalty Rate for each Relevant Metal and the quantity (in metric tons) of the mineral-bearing ore sold or transferred at the Valuation Point, thus:

$$RP = ((RMV^1 \times ARR^1) + (RMV^2 \times ARR^2) + (RMV^3 \times ARR^3) + \dots (RMV \times ARR)) \times \text{Total quantity of mineral-bearing ore in metric tons}$$

Where:

RP = Royalty Payable

RMV^1 = the first Relevant Metal Value

ARR^1 = the Applicable Royalty Rate applicable to the first Relevant Metal

RMV^2 = the second Relevant Metal Value

ARR^2 = the Applicable Royalty Rate applicable to the second Relevant Metal, and so on

RMV^3 = the third Relevant Metal Value

ARR^3 = the Applicable Royalty Rate applicable to the third Relevant Metal, and so on

2. Where the Council, under columns C and/or D in the tables below for the applicable Resource category, has determined that a composite royalty rate⁸

⁷ This approach towards determining a reference value for the metals contained in the ore has been discussed in connection with polymetallic nodules only. Whether this approach is appropriate for other mineral resource categories remains open for discussion. That said, the approach uses international reference prices, and to that extent does not present the Authority with potentially burdensome transfer pricing issues.

⁸ In connection with polymetallic nodules, discussions to date have focused on a single royalty rate to be applied to a metal basket value. Other than simplicity in calculation, no detailed discussion has taken place in terms of applying different royalty rates to different metals

shall be applicable to the assumed gross value of the mineral-bearing ore, the royalty payable for a royalty return period is the product of the sum of the Relevant Metal Values and the quantity (in tons) of the mineral-bearing ore sold or transferred at the Valuation Point multiplied by the composite royalty rate, thus:

$$RP = (RMV^1 + RMV^2 + RMV^3 + \dots + RMV^n) \times \text{Total quantity of mineral-bearing ore (in tons)} \times \text{composite royalty rate}$$

The following tables shall be adopted progressively, from time to time:

Table 1
Polymetallic nodules

A	B	C	D
<i>Relevant Metal</i>	<i>Average grade (percentage)</i>	<i>First Period of Commercial Production: Applicable Royalty Rate (percentage)</i>	<i>Second period of commercial production: applicable royalty rate (percentage)</i>
Metal 1	[x.xx]	[x.xx]	[x.xx]
Metal 2	[x.xx]	[x.xx]	[x.xx]
Metal 3	[x.xx]	[x.xx]	[x.xx]
Metal 4	[x.xx]	[x.xx]	[x.xx]
[Other]			

Table 2
Polymetallic sulphides

A	B	C	D
<i>Relevant Metal</i>	<i>Average grade (percentage)</i>	<i>First Period of Commercial Production: Applicable Royalty Rate (percentage)</i>	<i>Second Period of Commercial Production: Applicable Royalty Rate (percentage)</i>
Metal 1	[x.xx]	[x.xx]	[x.xx]
Metal 2	[x.xx]	[x.xx]	[x.xx]
Metal 3	[x.xx]	[x.xx]	[x.xx]
Metal 4	[x.xx]	[x.xx]	[x.xx]
[Other]			

Table 3
Cobalt-rich ferromanganese crusts

A	B	C	D
<i>Relevant Metal</i>	<i>Average grade (percentage)</i>	<i>First Period of Commercial Production: Applicable Royalty Rate (percentage)</i>	<i>Second Period of Commercial Production: Applicable Royalty Rate (percentage)</i>
Metal 1	[x.xx]	[x.xx]	[x.xx]
Metal 2	[x.xx]	[x.xx]	[x.xx]
Metal 3	[x.xx]	[x.xx]	[x.xx]
Metal 4	[x.xx]	[x.xx]	[x.xx]

contained in the basket.

<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>
<i>Relevant Metal</i>	<i>Average grade (percentage)</i>	<i>First Period of Commercial Production: Applicable Royalty Rate (percentage)</i>	<i>Second Period of Commercial Production: Applicable Royalty Rate (percentage)</i>
[Other]			

Schedule

Use of terms and scope

“**Agreement**” means the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

“**Best Available Scientific Evidence**” means the best scientific information and data accessible and attainable that, in the particular circumstances, is of good quality and is objective, within reasonable technical and economic constraints, and is based on internationally recognized scientific practices, standards, technologies and methodologies.

“**Best Available Techniques**” means the latest stage of development, and state-of-the-art processes, of facilities or of methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the protection of the Marine Environment from the harmful effects of Exploitation activities, taking into account the guidance set out in the applicable Guidelines.

“**Best Environmental Practices**” means the application of the most appropriate combination of environmental control measures and strategies, that will change with time in the light of improved knowledge, understanding or technology, taking into account the guidance set out in the applicable Guidelines.

“**Calendar Year**” means a period of 12 months, ending with 31 December.

“**Closure Plan**” means the document referred to in annex VIII.

“**Commercial Production**” shall be deemed to have begun where a Contractor engages in sustained large-scale recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information-gathering, analysis or the testing of equipment or plant.¹

“**Commission**” means the Legal and Technical Commission of the Authority.

“**Confidential Information**” shall have the meaning assigned to that term by regulation 89.

“**Contract Area**” means the part or parts of the Area allocated to a Contractor under an exploitation contract and defined by the coordinates listed in schedule 1 to such exploitation contract.

“**Contractor**” means a [contractor having a contract in accordance with Part III and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.] **[party to an exploitation contract in accordance with Part III of these regulations.]**

“**Convention**” means the United Nations Convention on the Law of the Sea.

“**Council**” means the executive organ of the Authority established under article 158 of the Convention.

“Damage to the Marine Environment” means ...

“**Day**” means calendar Day.

¹ This wording is taken from article 17 (2) (g) of annex III to the Convention. Article 17 (1) (b) (xiii) of annex III to the Convention requires the Authority to provide for a definition of commercial production, reflecting the objective criteria under article 17 (2) (g). A clearer definition of commercial production will be needed.

“Ecosystem Approach” means ...

“Effective Control” means ...

“Effective Protection” means ...

“Emergency Response and Contingency Plan” means the document referred to in annex V.

“Environmental Effect” means any consequences in the Marine Environment arising from the conduct of Exploitation activities, whether positive, negative, direct, indirect, temporary or permanent, or cumulative effect arising over time or in combination with other mining impacts.

“Environmental impact” means ...

“Environmental Management System” means that part of the overall management system applied by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals and environmental performance.

“Environmental Performance Guarantee” means a financial guarantee supplied under regulation 26.

“Environmental Plans” means the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure Plan.

“Exploit” and **“Exploitation”** mean the recovery for commercial purposes of Resources in the Area with exclusive rights and the extraction of Minerals therefrom, including the construction and operation of mining, processing and transportation systems in the Area, for the production and marketing of metals, as well as the decommissioning and closure of mining operations.

“Exploration Regulations” means the regulations on prospecting and exploration for polymetallic nodules in the Area, the regulations on prospecting and exploration for polymetallic sulphides in the Area and the regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area, as the case may be and as replaced or amended by the Council from time to time.

“Explore” and **“Exploration”**, as applicable, mean the searching for Resources in the Area with exclusive rights, the analysis of such Resources, the use and testing of recovery systems and equipment, processing facilities and transportation systems and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in Exploitation.

“Facilities-maritime infrastructure-floating platforms” means ...

“Feasibility Study” means a comprehensive study of a mineral deposit in which all geological, engineering, legal, operating, economic, social, environmental and other relevant factors are considered.

“Financing Plan” means the document referred to in annex III.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide.

“Guidelines” means documents that provide guidance on technical and administrative matters, issued by the **[Authority] [Commission and the Secretary-**

General, respectively] pursuant to regulation 95. **Guidelines have to be considered as recommendatory.**

“Incident” means an event, or sequence of events, where activities in the Area result in:

- (a) A marine Incident or a marine casualty as defined in the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code, effective 1 January 2010);
- (b) Serious Harm to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such Serious Harm to the Marine Environment is a reasonably foreseeable consequence of the situation; and/or
- (c) Damage to a submarine cable or pipeline, or any Installation.

“Incidents Register” means a register maintained under regulation 33 (2) (e).

“Inspector” means a person acting under Part XI of these regulations.

“Installations” includes, insofar as they are used for carrying out activities in the Area, structures and platforms, whether stationary or mobile.

“Marine Environment” includes the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof.

“Material Change” means a change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, the availability of new knowledge or technology and changes to operational management that are to be considered in the light of the Guidelines.

“Metal” means any metal contained in a Mineral.

“Minerals” means Resources that have been recovered from the Area.

“Mining Area” means the part or parts within the Contract Area, described in a Plan of Work, as may be modified from time to time in accordance with these regulations.

“Mining Discharge” means any sediment, waste or other effluent directly resulting from Exploitation, including shipboard or Installation processing immediately above a mine site of Minerals recovered from that mine site.

“Mining Workplan” means the document referred to in annex II.

“Mitigate” and **“Mitigation”** includes:

- (a) Avoiding an effect altogether by undertaking or not undertaking a certain activity or parts of an activity;
- (b) Minimizing effects by limiting the degree or magnitude of the activity and its implementation;
- (c) Rectifying the effect by repairing, rehabilitating or restoring the affected Marine Environment; and
- (d) Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity.

“Plan of Work” means a Plan of Work for Exploitation in the Area, defined collectively as all and any plans or other documents setting out the activities for the conduct of the Exploitation, which form part of, or is proposed to be part of, an exploitation contract.

“Protection” means ...

“Preservation” means ...

“Rehabilitation” means ...

“Regional environmental management plan” means ...

“Reserved Area” means any part of the Area designated by the Authority as a reserved area in accordance with article 8 of annex III to the Convention.

“Resources” means all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including: (a) polymetallic nodules, defined as any deposit or accretion of nodules, on or below the surface of the deep seabed, which contain metals such as manganese, nickel, cobalt and copper; (b) polymetallic sulphides, defined as hydrothermally formed deposits of sulphides and accompanying mineral resources in the Area which contain concentrations of metals such as copper, lead, zinc, gold and silver; and (c) cobalt crusts, defined as cobalt-rich ferromanganese hydroxide/oxide deposits formed from direct precipitation of Minerals from seawater onto hard substrates containing concentrations of metals such as cobalt, titanium, nickel, platinum, molybdenum, tellurium, cerium and other metallic and rare earth elements.

“Resource Category” means ...

“Restoration” means ...

“Rules of the Authority” means [the Convention, the Agreement,] these regulations and other rules, regulations and procedures of the Authority **including Standards** as may be adopted from time to time.

“Seabed Mining Register” means the registry established and maintained by the Authority in accordance with regulation 92.

“Serious Harm” means any effect from activities in the Area on the Marine Environment which represents a significant adverse change in the Marine Environment determined according to the rules, regulations and procedures adopted by the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific Evidence.

“Sound commercial principles” means ...

“Special Circumstances” means ...

“Sponsoring State” means a State party or parties to the Convention which submits a certificate of sponsorship of an applicant in accordance with regulation 6.

“Stakeholder” means a natural or juristic person or an association of persons with an interest of any kind in, or who may be affected by, the proposed or existing Exploitation activities under a Plan of Work in the Area, or who has relevant information or expertise.

“Standards” means such technical and other standards and protocols, including performance and process requirements, adopted pursuant to regulation 94. **Standards have to be considered as mandatory.**